

# EXHIBIT A

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

- - -

In Re: : Chapter 11  
:   
: Case No.  
W.R. GRACE & CO., et al, : 01-01139 JKF  
:   
: (Jointly  
Debtors : Administered)

- - -

Thursday, June 11, 2009

- - -

Oral deposition of JAY W.  
HUGHES, JR., ESQUIRE, taken pursuant to  
notice, was held at the offices of  
KIRKLAND & ELLIS, 665 Fifteenth Street,  
NW, Washington, DC 20005, commencing at  
9:07 a.m., on the above date, before Lori  
A. Zabielski, a Registered Professional  
Reporter and Notary Public in and for the  
Commonwealth of Pennsylvania.

- - -

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1 with W.R. Grace?

2 A. I am a senior litigation  
3 counsel in the legal department.

4 **Q. How long have you held that  
5 position?**

6 A. I have had that title  
7 probably since 1991.

8 **Q. When asbestos claims began  
9 accumulating against Grace in the '80s  
10 and '90s right up until the time of the  
11 bankruptcy, what was your role with  
12 respect to those claims?**

13 A. I was responsible for the  
14 day-to-day management and resolution of  
15 the asbestos personal injury claims filed  
16 against the company.

17 **Q. Who was your -- or who were  
18 your supervisors at that time, your  
19 direct reports?**

20 A. Since 1991, my supervisor  
21 was the general counsel, Bob Beber. Bob  
22 retired in 1998. In 1998, David Siegel  
23 became general counsel. I reported to  
24 Dave. Dave retired in -- well, it was

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1 after bankruptcy -- in 2005. Mark  
2 Shelnitz became general counsel. And at  
3 some point after Shelnitz became the  
4 general counsel, Richard Finke became  
5 assistant general counsel for litigation,  
6 and I reported to Richard since then.

7 **Q. We have taken the deposition  
8 of Mr. Finke. What documents have you  
9 reviewed to prepare to testify in this  
10 30(b)(6) deposition?**

11 A. I've reviewed the deposition  
12 transcripts of Mr. Finke, of Mr. Posner,  
13 and I have taken a look at the Trust  
14 Distribution Procedures, the Trust  
15 Agreement, and some other insurance  
16 agreements, just to kind of refresh my  
17 recollection about the issues that I am  
18 testifying about.

19 **Q. Have you reviewed any  
20 written communications between insurers  
21 and Grace relating to resolution of  
22 disputes with insurance carriers in  
23 preparation for this deposition?**

24 A. No.

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1 **Q. Were you involved with  
2 resolution disputes with insurers during  
3 your time as senior litigation counsel  
4 assigned to the asbestos claims?**

5 A. Yes.

6 **Q. How would you describe your  
7 role in those insurance dispute  
8 resolutions, by settlement, I assume,  
9 primarily, right? That's a compound  
10 question.**

11 MS. HARDING: Object to  
12 form.

13 MR. LEWIS: I will rephrase  
14 the question.

15 BY MR. LEWIS:

16 **Q. How were you involved in  
17 resolving the disputes with the insurance  
18 companies?**

19 A. Well, my primary role  
20 involved what I would refer to as  
21 post-settlement or post-resolution  
22 disputes with insurance carriers. I  
23 wasn't directly involved, although I was  
24 obviously consulted because of my

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1 involvement in the underlying asbestos  
2 personal injury cases. I wasn't  
3 generally involved in the coverage  
4 litigation between Grace and coverage  
5 disputes and the insurance carriers.

6 I have had a much greater  
7 involvement in certain disputes that  
8 arose based on what I would call the kind  
9 of execution and implementation of the  
10 insurance and agreements and settlement  
11 agreements and coverage in place  
12 agreements and reimbursement agreements.

13 MS. HARDING: Wait one  
14 second. To everybody that's on  
15 the phone, could everybody please  
16 mute their lines while the  
17 questioning is going on here in  
18 the room. We hear a lot of  
19 rustling and talking and things.  
20 So please put your phones on mute.  
21 Thank you.

22 MS. ALCABES: Barbara, if  
23 the witness could speak up a  
24 little bit, it would be helpful,

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1 too. Thanks.

2 MS. HARDING: The witness is  
3 talking pretty loudly, so there is  
4 not a whole lot we can do about  
5 that. Sorry.

6 MR. LEWIS: Can you hear me?

7 MS. ALCABES: Yes.

8 MR. LONGOSZ: Yes.

9 MS. HARDING: All right.

10 Thank you.

11 BY MR. LEWIS:

12 **Q. Did you review your prior**  
13 **depositions or testimony relating to the**  
14 **Grace bankruptcy to prepare for this**  
15 **deposition?**

16 A. Yes, I did.

17 **Q. How many times have you been**  
18 **deposed with respect to the bankruptcy,**  
19 **once?**

20 A. Twice before today.

21 **Q. Okay. I have one**  
22 **deposition. Where were you deposed the**  
23 **first time?**

24 A. The first time I was deposed

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1 in the fraudulent conveyance lawsuit,  
2 which was an adversary proceeding, I  
3 believe, in the bankruptcy, and that took  
4 place in 2002. And then I was deposed in  
5 2007 in connection with the personal  
6 injury estimation trial.

7 **Q. Did you testify on behalf of**  
8 **Grace in the estimation trial?**

9 A. No, I didn't.

10 **Q. Well, I don't want to cover**  
11 **that. I have been through that**  
12 **deposition.**

13 **And I think what you are**  
14 **referring to when you talk about**  
15 **post-settlement disputes, just generally,**  
16 **you were talking about arranging for**  
17 **audits, reporting to settled insurers,**  
18 **and this sort of thing; is that generally**  
19 **correct?**

20 A. Yes, documenting settlements  
21 and issues that arose in terms of Grace's  
22 documentation of payment, in terms of  
23 reimbursements under the agreement.

24 **Q. One of the interesting**

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1 **things to the Libby counsel that it**  
2 **involved when we became involved in this**  
3 **case was the way insurance was --**

4 MR. SCHIAVONI: Objection to  
5 form.

6 MS. HARDING: He didn't ask  
7 a question.

8 MR. LEWIS: Let me finish  
9 the question.

10 MR. SCHIAVONI: I wanted to  
11 give you a chance to start over.

12 MR. LEWIS: What did you  
13 say, sir?

14 MR. SCHIAVONI: I was giving  
15 you an opportunity to start over.

16 MR. LEWIS: Just let me  
17 complete my question. My question  
18 is going to be pretty benign. I  
19 just want to get this witness to  
20 another subject. And you can make  
21 your objection, and we will  
22 proceed.

23 BY MR. LEWIS:

24 **Q. When we got in the case, we**

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1 **made interrogatory requests early on in**  
2 **all of our cases, inquiring as to whether**  
3 **there was liability insurance available**  
4 **to Grace to resolve these claims, and the**  
5 **answer we got was generally, don't worry**  
6 **about it, we have got enough money, you**  
7 **don't need to know about insurance. And**  
8 **no insurance information was provided.**

9 MR. SCHIAVONI: Objection.

10 MR. LEWIS: I am not done.  
11 Okay.

12 MR. SCHIAVONI: You are  
13 giving a speech. You are not  
14 asking a question.

15 BY MR. LEWIS:

16 **Q. Do you recall that sort of**  
17 **response early on?**

18 MS. HARDING: Object to  
19 form. I would have to --

20 MR. SCHIAVONI: Object to  
21 form.

22 THE WITNESS: I would have  
23 to see a response. I am familiar  
24 with our discovery responses

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1 MS. HARDING: I am not  
2 telling him not to answer. I am  
3 just stating my objection.

4 MR. LEWIS: Thank you. Are  
5 you done?

6 MS. HARDING: Yes.

7 MR. SCHIAVONI: Counsel, you  
8 are asking for a legal conclusion,  
9 point-blank. It's obvious. You  
10 can certainly say otherwise, but  
11 that's what you are asking for.  
12 We object. And stop making  
13 speeches. Just answer [sic]  
14 questions.

15 MR. LEWIS: I think you  
16 should keep your composure and not  
17 get so upset, Counsel. I am going  
18 to conduct this deposition. You  
19 can object, and we will proceed.  
20 Okay?

21 All right. Read back the  
22 last question, please.

23 (The reporter read from the  
24 record as requested.)

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1 BY MR. LEWIS:

2 **Q. With that preface --**

3 MR. SCHIAVONI: I object.  
4 If you are going to incorporate  
5 your statements about the law in  
6 questions, it's just  
7 objectionable. And you are a very  
8 experienced trial lawyer. You  
9 know that. You know better.  
10 Objection to form.

11 MR. LEWIS: Are you finished  
12 with your objection?

13 Okay.

14 BY MR. LEWIS:

15 **Q. With that preface and**  
16 **acknowledging your objection, was it**  
17 **important to you in your role in settling**  
18 **these cases that you have a passing**  
19 **knowledge of the laws of the various**  
20 **states in which the cases were brought?**

21 MS. HARDING: Object to  
22 form.

23 MR. SCHIAVONI: Objection to  
24 form.

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1 THE WITNESS: Yes.

2 BY MR. LEWIS:

3 **Q. For example, you settle**  
4 **cases in a multitude of states, correct?**

5 A. Yes.

6 MS. HARDING: Just object to  
7 form in terms of you.

8 But go ahead.

9 BY MR. LEWIS:

10 **Q. When I say "you," I am**  
11 **referring to you on behalf of Grace.**

12 **If you want me to use Grace,**  
13 **I will use Grace. Would that be better?**  
14 **I will use Grace if that bothers you so**  
15 **much.**

16 **Were you mindful of what**  
17 **jurisdiction or even venue you were in**  
18 **when you evaluated cases for settlement?**

19 A. Yes.

20 **Q. And why is that?**

21 A. Well, I think there  
22 obviously can be legal distinctions in  
23 terms of the law with respect to personal  
24 injury cases that would be relevant to

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1 the value of the case. And also there  
2 are differences in historical verdicts,  
3 the amount of the verdicts in a case, so  
4 the jurisdiction would be relevant there  
5 as well.

6 **Q. For example, whether there**  
7 **is joint and several liability in a state**  
8 **or not might impact your valuation of the**  
9 **settlement; is that true?**

10 A. Yes.

11 **Q. What factors did you**  
12 **consider in evaluating a case for**  
13 **settlement?**

14 A. Well, I think I have  
15 testified in both of my prior depositions  
16 in this case in a fairly detailed manner  
17 on that question.

18 But I think the same types  
19 of factors that any individual involved  
20 in resolving asbestos cases, specifically  
21 in personal injury cases, generally the  
22 quality of the evidence in terms of the  
23 exposure of the particular plaintiff to  
24 Grace's products, the particular

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individual in terms of his age, the seriousness of the disease. In the asbestos arena, there is a distinction between, say, lung cancer and mesothelioma. Primarily it is due to the fact that lung cancer, there are established alternative causes to it. And those are -- that's kind of an overview.

**Q. Would the nature and extent of the exposure in most cases be of paramount importance to you in evaluating a case for settlement?**

MS. HARDING: Object to form.

THE WITNESS: I don't know if it would be paramount importance, but I think that certainly the evidence of exposure to Grace products was something that was one of the primary issues in terms of evaluating the case against Grace and what it might be worth.

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BY MR. LEWIS:

**Q. What percentage of the cases, if you know, that are claims that were brought against Grace were primarily Monokote exposure cases?**

MS. HARDING: Object to form, foundation, and overly broad.

But if you can answer, go ahead.

THE WITNESS: I couldn't give a specific percentage, but a substantial portion of the cases historically involved exposures to Monokote 3 and other products to which a commercially chrysotile asbestos had been added commercially.

BY MR. LEWIS:

**Q. Do you consider the Monokote cases as primarily chrysotile cases?**

MS. HARDING: Object to form.

THE WITNESS: I think that

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in terms of the percentage of asbestos in the products, they were overwhelmingly chrysotile. The only other asbestos that would have been involved would have been that which was incidental to the vermiculite, if it originated from Libby.

BY MR. LEWIS:

**Q. Was there any other source amphibole asbestos besides the asbestos that contaminated the vermiculite in Libby and products manufactured by Grace?**

MR. SCHIAVONI: Objection, no foundation, speculation.

THE WITNESS: It's fairly well-known that chrysotile deposits in Quebec, I believe, and other parts of the world may have some tremolite contamination as well. Besides that, I would say only the vermiculite and the potential for -- Libby vermiculite and the potential for Libby

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amphibole.

BY MR. LEWIS:

**Q. So if I suggested that most amphibole asbestos used in Grace products came from Libby, would you agree or not agree with that?**

MS. HARDING: Just object to form.

You can answer.

THE WITNESS: I don't have a basis for agreeing because I don't have --

MR. SCHIAVONI: Objection, calls for speculation, no foundation.

MR. LEWIS: I think he was saying that, Counsel. But don't interrupt the witness again. You can make your objections, but don't interrupt the witness. I don't interrupt the witness.

Let's have some decorum here.

Would you like to finish your answer, sir?

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<p>1 MR. SCHIAVONI: I think he 2 just acknowledged that the 3 question called for speculation. 4 MR. LEWIS: I think he did, 5 but allow him to answer. That was 6 a foundational question. 7 THE WITNESS: I said I don't 8 know enough about the issue of 9 contamination -- amphibole 10 contamination in chrysotile to 11 answer that question. 12 BY MR. LEWIS: 13 <b>Q. Fair enough.</b> 14 <b>Do you have enough</b> 15 <b>understanding of the asbestos that was</b> 16 <b>generated from Grace's and Zonolite's</b> 17 <b>operations in Libby was amphibole?</b> 18 MS. HARDING: Object to 19 form, generated. 20 But go ahead. 21 THE WITNESS: Yes. 22 BY MR. LEWIS: 23 <b>Q. Was it all amphibole as far</b> 24 <b>as you know?</b></p>	<p>1 THE WITNESS: But that's not 2 what I meant by nature of the 3 exposure. By nature of the 4 exposure I meant the extent, the 5 duration of the exposure and the 6 extent to which the activity that 7 was involved in terms of was the 8 individual applying our product, 9 was he working in a work space 10 where someone else was applying 11 it, did they mix our product. 12 That's what I am talking about, 13 the kind of factors that an 14 industrial hygienist would use in 15 assessing the nature of the 16 exposure and the risk to the 17 worker, who was the plaintiff. 18 BY MR. LEWIS: 19 <b>Q. Another factor you talked</b> 20 <b>about was the quality of the evidence.</b> 21 <b>What did you mean by that?</b> 22 A. What I meant is that if 23 there were -- in a typical asbestos 24 personal injury case, you might have</p>
Page 35	Page 37
<p>1 MS. HARDING: Object to 2 form. 3 MR. SCHIAVONI: No 4 foundation, calls for speculation. 5 We have a lawyer testifying here, 6 not a fact witness from Libby or a 7 scientist or anything else. 8 MR. LEWIS: Go ahead and 9 answer. 10 THE WITNESS: Well, I was 11 going to start by saying what 12 counsel down the table just said. 13 But my understanding is 14 amphibole, but I am not a 15 mineralogist and I don't have that 16 kind of expertise. 17 BY MR. LEWIS: 18 <b>Q. Yes, but one of the things</b> 19 <b>that you said was important and a factor</b> 20 <b>in evaluating a claim was the nature of</b> 21 <b>the exposure, correct?</b> 22 MS. HARDING: Object to 23 form. 24 Go ahead.</p>	<p>1 coworkers who said a Monokote product 2 and/or Zonolite product was present at 3 this work site. And if the individual 4 again, if the plaintiff himself recalled 5 it and accurately described it in 6 deposition testimony, that, in my 7 opinion, would be better evidence and 8 would be more persuasive to a jury than 9 if a coworker who had no personal 10 relationship with or didn't work 11 alongside the plaintiff gave the same 12 kind of testimony and it was an indirect 13 connection between that. 14 And also there was 15 documentary evidence. If we had evidence 16 in our files that our product was used at 17 a particular building at a particular 18 time period, then I would consider that 19 higher quality evidence than if we had no 20 documents, which was often the case, no 21 documents actually which showed shipments 22 or sale of our product for installation 23 in a particular building and an 24 individual coworker or person at the</p>

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<p>1 site, sometimes somebody who wasn't even 2 involved in the application of the 3 product, testified about it.</p> <p>4 <b>Q. Have you ever been to Libby?</b> 5 A. Yes, I have.</p> <p>6 <b>Q. How many times did you go 7 there?</b> 8 A. I have been there twice.</p> <p>9 <b>Q. Did you go up to the mine?</b> 10 A. No, I haven't been to the 11 mine. It was closed.</p> <p>12 <b>Q. Have you ever reviewed 13 documents concerning the kinds of 14 exposures at Libby?</b> 15 A. Yes, I have.</p> <p>16 <b>Q. Libby claims did not involve 17 products claims; is that correct?</b> 18 MS. HARDING: Object to 19 form. 20 MR. SCHIAVONI: Objection, 21 calls for a legal conclusion, 22 overly broad. 23 MS. HARDING: And it's 24 overly broad.</p>	<p>1 to form and let the witness 2 answer.</p> <p>3 MR. LEWIS: The witness 4 knows exactly what I am asking 5 about here.</p> <p>6 MS. HARDING: I don't know 7 that the witness knows what you 8 are talking about.</p> <p>9 MR. SCHIAVONI: Are you 10 contending that all the policies 11 have same definitions for products 12 in asking this question? Because 13 when you say the witness 14 understands, I mean, you seem to 15 be coaching the witness. Is that 16 your contention, that every policy 17 has the same definition for 18 products? 19 MR. LEWIS: I am not even 20 referring to policies here, sir. 21 I am referring to common law, tort 22 law. Okay. Those kinds -- the 23 distinction is between products 24 claims --</p>
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<p>1 MR. LIESEMER: I join in the 2 objection.</p> <p>3 MR. SCHIAVONI: Lacks 4 foundation, overly ambiguous.</p> <p>5 MR. LEWIS: Do you want the 6 question read back or do you 7 remember?</p> <p>8 THE WITNESS: You should 9 probably read it back.</p> <p>10 MR. LEWIS: I will just 11 restate it.</p> <p>12 BY MR. LEWIS: 13 <b>Q. Did Libby claims involve 14 products claims?</b> 15 MS. HARDING: I am just 16 going to object to form in terms 17 of Libby claims. There is a wide 18 variety of Libby claims and a wide 19 variety of people. I don't 20 know -- 21 MR. LEWIS: Do you want me 22 to define Libby claims? That's 23 fine. 24 MS. HARDING: I will object</p>	<p>1 MR. SCHIAVONI: And what? 2 MR. LEWIS: -- injuries that 3 result from exposures to products 4 as opposed to injury in Libby that 5 related to exposure to the mining 6 and manufacturing of products or 7 sub-products. So I am not talking 8 about insurance policies right 9 here right now. I will later.</p> <p>10 MR. JACOB COHN: If there is 11 a question, I object to the form.</p> <p>12 MS. HARDING: I just object 13 to the form, and I think you can 14 answer. Did we get the question 15 back yet?</p> <p>16 MR. LEWIS: I might take 17 eight hours here today if we keep 18 doing this.</p> <p>19 MS. HARDING: Well, I don't 20 want to take eight hours, but I do 21 want to make sure the witness 22 understands the question.</p> <p>23 MS. DeCRISTOFARO: And I 24 join.</p>

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1 A. The McDonald study, Amanda  
2 study, 1986.

3 **Q. Do you believe that the**  
4 **exposures at the dry mill were**  
5 **substantially similar to the exposures to**  
6 **Monokote 3 on construction sites?**

7 MS. HARDING: Object to form  
8 and foundation. This witness is  
9 not an expert, and I think it's an  
10 improper question to ask this  
11 witness.

12 But you can answer.

13 MR. LIESEMER: Object to the  
14 form of the question.

15 MR. SCHIAVONI: On a more  
16 fundamental basis, this witness is  
17 a 30(b)(6) witness. He is not an  
18 expert; he is not a fact witness.  
19 And this is not a topic that is  
20 designated.

21 MR. LEWIS: Yes, it is.

22 MR. SCHIAVONI: Really?  
23 Which one?

24 MR. LEWIS: Just look a

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1 MS. HARDING: Grace has  
2 already made its objections, and  
3 the witness can answer to the  
4 extent that --

5 THE WITNESS: Again, I am  
6 not an industrial hygienist, and I  
7 really -- having my opinion on  
8 whether they are quote/unquote  
9 substantially similar, I don't  
10 think I can do that.

11 They both involve asbestos  
12 exposures. I have described in my  
13 earlier testimony the conditions  
14 were different, that one involved  
15 the spray application of a  
16 finished product at the  
17 construction site, the Libby  
18 exposures involved working at a  
19 mine and mill operation. And the  
20 data that does exist is available,  
21 and I would rather rely on the  
22 data that's available. And I  
23 don't have that in front of me.

24 BY MR. LEWIS:

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1 them, Counsel. I am not going to  
2 answer your questions. I don't  
3 have to answer to you. You make  
4 your objections on the record, and  
5 we will proceed. Or otherwise we  
6 will be here forever.

7 MR. SCHIAVONI: If you can't  
8 identify it --

9 MS. HARDING: Let's just  
10 answer. I don't think he can  
11 answer, but go ahead.

12 MR. LEWIS: Do you want to  
13 the question read back? Let's  
14 read the question back so he can  
15 get a complete record.

16 (The reporter read from the  
17 record as requested.)

18 MR. SCHIAVONI: I object to  
19 form, and I object to Grace  
20 offering this testimony. It's not  
21 designated as corporate testimony.  
22 If that's what Grace is going to  
23 do, then you have my objection on  
24 the record.

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1 **Q. Do you recall when we**  
2 **started this deposition that I asked you**  
3 **to testify in the role of senior**  
4 **litigation counsel, settling asbestos**  
5 **claims?**

6 A. Yes.

7 **Q. We talked about that.**

8 **Do you agree that to perform**  
9 **that role well for your employer, you had**  
10 **to know something about asbestos**  
11 **exposure?**

12 A. Absolutely.

13 MS. HARDING: Object to  
14 form.

15 Go ahead.

16 BY MR. LEWIS:

17 **Q. And you differentiated --**  
18 **let me withdraw that question.**

19 **In every case that you**  
20 **looked at as an individual case, would**  
21 **the nature and extent of the exposure be**  
22 **fundamental to your evaluation of the**  
23 **case?**

24 MS. HARDING: Objection to

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1 form.

2 **THE WITNESS: Yes.**

3 BY MR. LEWIS:

4 **Q. The Libby cases were largely**  
5 **settled on a case-by-case basis, correct?**

6 MS. HARDING: Object to  
7 Libby cases. It's overly broad.  
8 But go ahead.

9 THE WITNESS: Yes.

10 BY MR. LEWIS:

11 **Q. Again, I am talking about**  
12 **Libby cases, as you earlier defined them,**  
13 **correct?**

14 A. Yes.

15 MS. HARDING: Who defined  
16 them?

17 MR. LEWIS: He agreed that  
18 we were talking about Libby cases,  
19 we were talking about cases that  
20 arose in Lincoln County, and he's  
21 testified that they were not --  
22 that they were manufactured --  
23 they were exposure cases different  
24 from Monokote exposures in the

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1 sense -- and that's what I am  
2 asking about.

3 MS. HARDING: Okay. I  
4 object to the form. I think the  
5 terminology of "Libby cases" is  
6 overly broad.

7 But go ahead.

8 MR. SCHIAVONI: Can you just  
9 add to that those are a  
10 pre-petition cases, right?

11 MR. LEWIS: Please answer  
12 the question.

13 MR. SCHIAVONI: Objection to  
14 form, overly broad.

15 MS. DeCRISTOFARO: I join.

16 THE WITNESS: Prior to  
17 bankruptcy, the cases in Libby  
18 involving Libby employees and  
19 family members that were settled  
20 generally were settled  
21 individually, although in the  
22 period of time just prior to the  
23 bankruptcy, there were cases that  
24 were settled in small groups of

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1 five to ten cases.

2 BY MR. LEWIS:

3 **Q. Was that with the Heberling**  
4 **firm?**

5 A. Yes.

6 **Q. There were other settlements**  
7 **where you settled cases, 10,000 claims at**  
8 **a time, correct?**

9 A. Yes. Not Libby cases.

10 Cases in other parts of the country  
11 involving exposures to finished products.

12 **Q. Right.**

13 **In those cases where you**  
14 **settled them 10,000 at a time or several**  
15 **thousand at a time, did you evaluate the**  
16 **quality of evidence for each individual**  
17 **claim in those cases?**

18 MS. HARDING: Object to  
19 form.

20 THE WITNESS: Generally, the  
21 agreement set forth specific  
22 requirements for a case,  
23 qualifying materials, and we  
24 reviewed, individually reviewed

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1 the qualifying materials that were  
2 submitted for each case before the  
3 case was settled.

4 I have testified about this  
5 and how those settlement  
6 agreements or inventory  
7 settlements worked in both of my  
8 prior depositions in this case.

9 BY MR. LEWIS:

10 **Q. Did you evaluate the**  
11 **exposure for each individual claim?**

12 A. Exposure --

13 MS. HARDING: Object to  
14 form, and I am just going to  
15 not -- I am not going to instruct  
16 the witness not to answer, but he  
17 has had prior deposition testimony  
18 on how these cases were settled.  
19 And counsel has indicated that you  
20 have reviewed those transcripts,  
21 so I just would request that we  
22 try not to repeat the same  
23 questions that were asked  
24 previously since the witness has

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1 already testified so we can try to  
2 get through this today. I am not  
3 going to -- with that, I am just  
4 making a request.

5 MR. LEWIS: Could you read  
6 back the question, please?

7 (The reporter read from the  
8 record as requested.)

9 THE WITNESS: Well, the  
10 qualifying materials that were  
11 required under the settlement  
12 agreements generally included  
13 evidence of exposure, and that  
14 would have been evaluated before  
15 the settlement was made.

16 BY MR. LEWIS:

17 **Q. As I recall your testimony,**  
18 **you were highly critical of the nature of**  
19 **evidence of exposure in most products**  
20 **cases; is that true?**

21 MS. HARDING: Object to  
22 form.

23 THE WITNESS: I was critical  
24 as to the credibility of the

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1 exposure evidence in many cases  
2 historically that were being filed  
3 in the period from -- well,  
4 throughout the period of the  
5 asbestos litigation, but  
6 specifically in the late '90s and  
7 early 2000.

8 BY MR. LEWIS:

9 **Q. Did you feel that**  
10 **plaintiffs' counsel were inventing**  
11 **evidence for their clients?**

12 MS. HARDING: Object to  
13 form.

14 MR. LIESEMER: Object to  
15 form.

16 THE WITNESS: Inventing  
17 evidence implies something that --  
18 I questioned the validity of the  
19 process through which the evidence  
20 was created. Whether it's  
21 invented, I don't know. But there  
22 are people's memories, and the way  
23 memory works, in my experience as  
24 a human being and also from people

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1 who are experts in the area, a lot  
2 this evidence seemed inconsistent  
3 with it.

4 BY MR. LEWIS:

5 **Q. It was inconsistent with**  
6 **your own documents relating to where your**  
7 **asbestos was located or Grace's asbestos**  
8 **was located, correct?**

9 MS. HARDING: Object to  
10 form.

11 THE WITNESS: I don't know  
12 if it was inconsistent because we  
13 unfortunately didn't have a  
14 complete set of documents which  
15 would have told us where our  
16 products were located.

17 It was often inconsistent  
18 with what we knew about our  
19 products and how they were used  
20 and, you know, the product  
21 formulas and the type of material  
22 and the conditions that were being  
23 used, they were being applied  
24 under.

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1 BY MR. LEWIS:

2 **Q. Okay. In the Finch**  
3 **deposition that I read, I could not**  
4 **understand how you went through the**  
5 **information submitted for each claimant**  
6 **in this inventory or mass settlements, I**  
7 **would call them.**

8 **Did you do that**  
9 **post-settlement or pre-settlement?**

10 A. Post-settlement --

11 MS. HARDING: Object to  
12 form.

13 THE WITNESS: -- generally.

14 BY MR. LEWIS:

15 **Q. So if you settled 10,000**  
16 **cases for \$50 million, as you did in one**  
17 **case, does that mean that you paid the**  
18 **\$50 million regardless of whether there**  
19 **was proof, actual proof, in each**  
20 **individual case?**

21 MR. JACOB COHN: Object to  
22 form.

23 MS. HARDING: Object to  
24 form.

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THE WITNESS: We paid them 50 million -- it varied from settlement to settlement, quite frankly. In certain situations, we paid the money, but the authority for the attorneys representing the claimants to release the money and pay the money was subject to receiving communications from us that the qualifying materials met the requirements of the agreement.

BY MR. LEWIS:

**Q. In any one of those settlements, did Grace ever reject the proof offer to support the individual claims post settlement?**

A. Yes.

**Q. How many times did that happen?**

MS. HARDING: Object to form.

THE WITNESS: It happened more times than I could -- it

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happened on a fairly regular basis, although it wasn't a substantial percentage of the cases.

BY MR. LEWIS:

**Q. So if you settle a case for 50 -- 10,000 claims for \$50 million, and 100 of those claims, for example -- I am asking you to assume a hypothetical here -- didn't show substantial proof of exposure or disease, the proof was defective in some manner, would the amount allocated for those 100 claimants be deducted from the settlement?**

A. Yes.

**Q. In every case?**

A. Not in every case, but, I mean, there were other -- it's difficult to say. I mean, in the administration of cases like that, you could assume a certain percentage of cases weren't going to meet the requirements in valuing the cases. There are all kinds of ways you could do it, but there was definitely a

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process in place.

And, again, I am -- and I think as I have testified in the past, there was a process was in place, and I was confident that in the process that we had in place was reviewing the qualifying materials and we were paying places only where they had submitted qualifying materials consistent with the agreement.

I think my opinion as to the relative credibility of some of the qualifying materials, both medical and exposure, I have testified before and that is --

**Q. You have so testified. I am not going to get into that.**

A. Okay.

**Q. Do you recall the case, the specific case where you settled 10,000 claims for \$50 million, the firm you settled with?**

A. I believe it was Baron & Budd.

**Q. Were those 10,000 claims**

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**just asbestosis claims or were there cancer and mesos in those claims?**

A. There were cancers and mesos.

**Q. Did the settlement provide that the mesos would get a different amount than the asbestosis claims?**

A. As I recall, yes.

**Q. Who made the decision as to who got what, how much each claimant was individually paid? Did Grace have any input in that?**

MS. HARDING: Just object to the extent it calls for attorney-client work product information. And to the extent -- I instruct the witness not to answer to the extent that it calls for that. To the extent that it doesn't, you can answer.

MR. LEWIS: I think the that's a fair objection because the question is not very precise. I will rephrase the question.

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<p>1 we filed with the court. And I am 2 not going to list them all here, 3 but they are listed in that 4 category. 5 And as we have said in other 6 depositions we listed somebody for 7 every category, noting in our 8 objections and in our 9 communications with counsel, that 10 we didn't believe that all 11 categories were proper categories 12 for inquiry in the 30(b)(6) 13 deposition, as we believe this 14 category is not. 15 MR. LEWIS: Do you direct 16 the witness not to answer any 17 questions in this category, 18 development of the -- 19 MS. HARDING: I have allowed 20 the witness to answer, and he's 21 answered he didn't know. I just 22 wanted to note that for the record 23 to the extent that you are 24 complaining that he is not --</p>	<p>1 question. 2 MS. HARDING: Object to the 3 form, and I think the witness has 4 already asked and answered. 5 THE WITNESS: I think I may 6 have participated in a phone call 7 where drafts were discussed in 8 discussions with ACC and FCR 9 representatives and Grace and 10 Grace's counsel, but I don't have 11 a specific recollection. 12 BY MR. LEWIS: 13 <b>Q. Do you have any knowledge of</b> 14 <b>the preparation of the documents,</b> 15 <b>including the drafts of the TDP?</b> 16 A. Again, I described my 17 involvement and the knowledge I have. I 18 was provided with copies of the drafts 19 early on in the process and reviewed them 20 and advised Grace and Grace's counsel and 21 my comments based on my experience in 22 asbestos litigation. But the primary 23 drafting role was with the ACC and FCR, 24 as it probably should be.</p>
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<p>1 MR. LEWIS: I am not 2 complaining about anything. I am 3 just asking questions. 4 I wanted to ask more 5 questions in this area, and I was 6 asking you if you are going to 7 direct -- you are claiming 8 privilege? 9 MS. HARDING: I am not going 10 to have a blanket objection, but I 11 wanted to remind counsel of that 12 objection. And then you can ask 13 questions, and we can go from 14 there. 15 BY MR. LEWIS: 16 <b>Q. So your involvement in the</b> 17 <b>development of the TDP was, as you</b> 18 <b>described earlier? You just reviewed it,</b> 19 <b>correct?</b> 20 A. Yes, a draft. 21 <b>Q. Were there any negotiations</b> 22 <b>between you and the ACC concerning the</b> 23 <b>language of the TDP?</b> 24 MR. LIESEMER: Object to the</p>	<p>1 <b>Q. Why do you say it probably</b> 2 <b>should be?</b> 3 MS. HARDING: Object to 4 form. 5 <b>THE WITNESS: Because their</b> 6 <b>constituency will ultimately be</b> 7 <b>the beneficiaries of the Trust.</b> 8 BY MR. LEWIS: 9 <b>Q. Because, to Grace, Grace</b> 10 <b>will pay the same amount under the</b> 11 <b>settlement regardless of how the TDP is</b> 12 <b>drawn, correct?</b> 13 MR. LIESEMER: Object to the 14 form. 15 MS. HARDING: Object to the 16 form. 17 THE WITNESS: I guess that's 18 probably part of it but, again, 19 the terms of their constituency, 20 the ultimate beneficiaries of the 21 Trust and the way the Trust 22 operates and the distribution 23 procedure is something that they 24 probably -- the asbestos claimants</p>

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- - -  
EXAMINATION

BY MR. BROWN:

**Q. Good afternoon, Mr. Hughes. My name is Michael Brown. I represent GEICO, Republic Insurance Company, Seaton Insurance Company, and OneBeacon America**

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Insurance Company.

**We have just had marked as Hughes-11 a document that I would like you to take a look at and tell me if you can identify it.**

A. It's a letter indicted April 25th, 2009 from Barbara Harding to counsel, and attached is the witness designations and topics of deposition and a listing of the designated witness based on deposition notices that have been filed in this case and the confirmation hearing.

**Q. Okay. And have you seen this document before today?**

A. I have.

**Q. And just so it's clear, this is a compilation of all the various topics and particular Grace witness that is prepared to testify about the subjects where his name appears, correct?**

A. Right.

**Q. Okay. You can put that aside.**

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**Are you generally familiar with Grace's liability insurance program?**

A. Yes.

**Q. Okay. Do you understand that Grace has various layers of insurance?**

A. Yes.

**Q. Okay. Could you describe for me your understanding of that?**

A. Well, under the period of time from, say, pre-1985 when there was asbestos insurance available, Grace would each year or -- and it would have a primary policy with CNA from 1973 through '85, Maryland Casualty before that, and that there would be additional policies, excess policies, which would provide coverage for losses or claims in the event that the aggregate limits of the primary policies were exhausted.

And so a company like Grace would go up and buy, you know, coverage, insurance coverage for a particular year, a particular policy period, and they

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would have a primary policy. And then they would have policies above that, say, you know, at \$5 million level, \$10 million level, depending on how they assess their risk.

**Q. Okay. And you have a general familiarity with the concept of a coverage chart, correct?**

A. Yes.

**Q. Okay. And you understand that there is various layers of coverage from the primary to the umbrella and the excess above that?**

A. Yes.

**Q. And Grace, as you just testified, purchased policies in each policy year at each of those levels?**

A. Yes.

MR. BROWN: Let me mark a second document, and this will be Hughes-12.

(Hughes-12 marked for identification at this time.)

(Mr. Speights re-joined the

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deposition via teleconference at this time.)

BY MR. BROWN:

**Q. Mr. Hughes, you have before you a document we marked as Hughes-12. Can you take a few moments to familiarize yourself with it?**

A. Sure.

MS. HARDING: I am going to note for the record that we did designate Mr. Finke with respect to the Transfer Agreement. But if you want to ask prosecute Hughes a question --

MR. BROWN: I am not going to ask him a lot about the agreement. I am going to ask about the attachment to the agreement.

MS. HARDING: I don't think it changes the notation for the record. But go ahead and ask him questions, and to the extent he can answer without speculating...

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BY MR. BROWN:

**Q. Let me start by asking you whether you have seen the document marked Hughes-12 before?**

A. I have seen the agreement before.

**Q. Okay. Can you look at the back of it, and you will note that the agreement has some schedules?**

A. Yes.

**Q. I believe there are three of them.**

**Have you seen those schedules before today?**

A. I can't say that I have seen these schedules. I have seen similar documents.

**Q. Okay. Have you seen ones similar to what's been marked or what is identified as Schedule 1?**

A. Yes.

**Q. Okay. In what connection did you see the document that is attached as Schedule 1 to Hughes-12?**

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1 A. Just in connection with the  
2 case, in connection with, you know, my  
3 involvement in asbestos litigation and  
4 the coverage issues associated with it to  
5 Jeff Posner and others within Grace. I  
6 think I have seen this policy list  
7 before.

8 **Q. Okay. Is this a document**  
9 **that Mr. Posner prepared; do you know?**

10 A. Not specifically, no.

11 **Q. Okay. Is it a document that**  
12 **someone at Grace prepared?**

13 A. I don't know this specific  
14 version of the document, but Mr. Posner  
15 certainly would be the person that if I  
16 were to have undertaken the task of  
17 creating this document, I would have  
18 consulted with Mr. Posner.

19 **Q. Okay. Can you take a look**  
20 **at the first page? It's a -- the**  
21 **Schedule is a 20-page document. And you**  
22 **will see that there are -- well, first of**  
23 **all, what do you understand the schedule**  
24 **generally to be?**

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1 A. The list of policies that  
2 were available to Grace to pay  
3 asbestos-related claims.

4 **Q. Okay. Would these be**  
5 **policies that would have been in the part**  
6 **of the general liability program that you**  
7 **indicated you were generally familiar**  
8 **with?**

9 A. Yes.

10 **Q. Okay. Can you describe for**  
11 **me what each of the headings along the**  
12 **top of the first page, what you**  
13 **understand those to mean?**

14 A. Well, the policy year is the  
15 year that the insurance policy covered in  
16 terms of losses that occurred in the year  
17 or at least triggered the insurance  
18 coverage for that period of time.  
19 Insurer is obviously the insurer. And  
20 then insurance company that's providing  
21 the coverage is obligated to provide  
22 insurance for losses that triggered the  
23 policy.

24 The policy number identifies

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1 the specific insurance policies.  
2 Generally, you have a policy number  
3 identifying which policy. And then the  
4 layers, when we were talking about before  
5 about the program and how you have to  
6 umbrella policies and excess policies,  
7 and they are layered based on the amount  
8 of the coverage available for a  
9 particular policy period. That  
10 identifies which policy -- excuse me --  
11 which layer the particular policy is in  
12 the Grace coverage block.

13 **Q. If it says primary, that's**  
14 **the very bottom level of insurance; is**  
15 **that correct?**

16 A. Yes.

17 **Q. And then if it has a one**  
18 **next to it, is that the first layer**  
19 **excess?**

20 A. First layer excess would be  
21 the way I understand it.

22 **Q. And it goes up to -- the**  
23 **highest number I thought I saw was 8 and**  
24 **would be the highest level for any policy**

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1 **year? That is the highest level of**  
2 **excess insurance?**

3 A. That's the highest I saw.

4 **Q. Okay. Now, I think you**  
5 **testified earlier that you were the**  
6 **person that was primarily responsible for**  
7 **handling the day-to-day defense of Grace**  
8 **PI claims at least internally at Grace;**  
9 **is that right?**

10 A. Yes.

11 **Q. Okay. And in that capacity,**  
12 **did you have occasion to deal with**  
13 **insurance issues?**

14 A. Yes. Again, as I have  
15 described, primarily in the context of  
16 Grace's obligations under insurance  
17 arrangements with reimbursement or  
18 coverage in place arranged. Grace had  
19 obligations to insurers in making sure we  
20 met those obligations and getting  
21 reimbursed under the agreements.

22 **Q. Okay.**

23 A. And the policies as well, I  
24 suppose.

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1 to. I think it's unquestionably  
2 clear that we have gone over and  
3 beyond our requirements under  
4 30(b)(6) in this whole process.

5 MR. BROWN: Okay. Can I ask  
6 my next question?

7 MS. HARDING: Yes, you may.  
8 BY MR. BROWN:

9 **Q. Mr. Hughes, let's go to**  
10 **other schedules for the moment. Let's**  
11 **take a look at the second schedule.**

12 MS. HARDING: Again,  
13 Mr. Hughes wasn't even designated  
14 with respect to this schedule or  
15 this exhibit, but go ahead. I am  
16 happy to let him answer the  
17 question.

18 MR. BROWN: We was  
19 designated as a person that would  
20 be produced on insurance issues.  
21 There are nine topics on that  
22 chart that had his name next to  
23 it. We don't need to quarrel  
24 about it. If he doesn't know the

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1 answer, fine.  
2 BY MR. BROWN:

3 **Q. Mr. Hughes, my question with**  
4 **respect to Schedule 2 of Hughes-12 is, do**  
5 **you understand what the schedule**  
6 **reflects?**

7 A. Yes.

8 **Q. What is that?**

9 A. It's a list of the insurance  
10 settlement agreements -- settlement  
11 agreements which resolved coverage  
12 disputes with liability insurers that  
13 provided Grace with insurance coverage  
14 for asbestos-related personal injury and  
15 property damage claims and the dates of  
16 those agreements.

17 **Q. If you could take a look at**  
18 **Schedule 3, which is a couple pages**  
19 **along, do you have an understanding of**  
20 **what is reflected on Schedule 3?**

21 A. It's a similar list of  
22 insurers where we have what's  
23 characterized here as a asbestos  
24 reimbursement agreements.

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1 **Q. All right. Let's go back to**  
2 **Schedule 1 and specifically page 7 of**  
3 **Schedule 1.**

4 A. Okay.

5 **Q. And you heard me when I**  
6 **introduced myself that one of my clients**  
7 **is GEICO. You will see in the middle of**  
8 **the page that there are three policies**  
9 **for GEICO listed on page 7.**

10 **Do you see those?**

11 A. Yes.

12 **Q. Okay. Did Grace to your**  
13 **knowledge have any settlement with GEICO?**

14 A. Not to my knowledge.

15 **Q. Okay. Let's go a little bit**  
16 **further on to page 16. Another one of**  
17 **the companies that I indicated I**  
18 **represent is Republic, and you will see**  
19 **toward the top of that page there are two**  
20 **policies listed for Republic.**

21 **To your knowledge, did Grace**  
22 **have any settlements with Republic**  
23 **Insurance Company?**

24 A. Again, I am familiar with

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1 and maintain a list in my office because  
2 of my involvement in terms of what -- I  
3 don't know and don't recall specifically  
4 an agreement with Republic.

5 But the other issue, of  
6 course, when you come with insurance  
7 companies is kind of the changing  
8 landscape of who they are. But I don't  
9 specifically recall Republic Insurance.  
10 I think there are over 60 or 70  
11 agreements, settlement agreements with  
12 different kinds.

13 **Q. Would you agree with me that**  
14 **Republic Insurance Company does not**  
15 **appear on either Schedule 3 -- excuse me**  
16 **-- either 2 or 3?**

17 A. No.

18 **Q. Does that help refresh your**  
19 **recollection as to whether Grace had --**

20 MR. LEWIS: That sounds like  
21 a double negative. I don't know  
22 that the record is clear on that.

23 MR. SCHIAVONI:

24 No, he doesn't agree or not?

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<p>1 MR. LEWIS: Can you read it 2 back? I might have muddled it. 3 (The reporter read from the 4 record as requested.) 5 THE WITNESS: I agree that 6 it's correct. 7 BY MR. BROWN: 8 <b>Q. We were talking about</b> 9 <b>Republic. Why don't we try to fix that.</b> 10 <b>I am correct, am I right</b> 11 <b>knot that Republic Insurance Company does</b> 12 <b>not appear on Schedule 2 or 3?</b> 13 A. Yes, you are correct. It 14 does not appear on Schedule 2 or 3. 15 <b>Q. Does that refresh your</b> 16 <b>recollection as to whether Grace had a</b> 17 <b>settlement agreement with Republic?</b> 18 A. I have no recollection that 19 it does, and since it doesn't appear on 2 20 and 3 and my understanding is 2 and 3 are 21 accurate, then I would say my 22 understanding would be no, that there is 23 no settlement agreement with Republic. 24 <b>Q. Okay. You indicated at the</b></p>	<p>1 question, go ahead. 2 <b>THE WITNESS: Well, to</b> 3 <b>provide insurance coverage and to</b> 4 <b>provide indemnity payments when</b> 5 <b>the underlying policies under the</b> 6 <b>terms of the insurance contract.</b> 7 <b>If a loss covered within the scope</b> 8 <b>of the coverage provided to the</b> 9 <b>insured and that the underlying</b> 10 <b>policies have been exhausted, that</b> 11 <b>it would trigger an obligation on</b> 12 <b>the part of the excess insurer to</b> 13 <b>pay the claim, again, in a manner</b> 14 <b>consistent with the insurance</b> 15 <b>policy.</b> 16 BY MR. BROWN: 17 <b>Q. Okay. And just following up</b> 18 <b>on that latter phrase at the end of your</b> 19 <b>answer, do you understand generally --</b> 20 <b>and I understand that it may be different</b> 21 <b>from policy to policy. But do you</b> 22 <b>understand generally that the insurer has</b> 23 <b>a duty to cooperate with the excess</b> 24 <b>insurer?</b></p>
Page 315	Page 317
<p>1 <b>outset that you were generally familiar</b> 2 <b>with Grace's insurance program.</b> 3 <b>Are you generally familiar</b> 4 <b>with the rights and duties of the</b> 5 <b>insured, on the one hand, and the</b> 6 <b>insurer, on the other, under an excess</b> 7 <b>policy?</b> 8 MS. HARDING: Object to 9 form. 10 Go ahead. 11 <b>THE WITNESS: Yes, I am</b> 12 <b>generally familiar.</b> 13 BY MR. BROWN: 14 <b>Q. Okay. Can you describe your</b> 15 <b>familiarity in terms of -- what do you</b> 16 <b>understand to be the insurer's, the</b> 17 <b>excess insurer's rights under an excess</b> 18 <b>policy?</b> 19 MS. HARDING: I am just 20 going to object to form and to the 21 extent it's overly broad and 22 doesn't refer to a specific 23 policy. 24 But if you can answer the</p>	<p>1 MS. HARDING: Object to 2 form. Again, same objection. 3 <b>THE WITNESS: I know</b> 4 <b>generally that in terms of</b> 5 <b>insurance policies, an insured has</b> 6 <b>a duty to cooperate.</b> 7 BY MR. BROWN: 8 <b>Q. And the insured has a duty</b> 9 <b>to give notice of claims; you are</b> 10 <b>familiar with that as well?</b> 11 A. Yes. 12 <b>Q. And are you generally</b> 13 <b>familiar at that the excess layer, the</b> 14 <b>insure has a right to associate in the</b> 15 <b>defense of claims?</b> 16 MS. HARDING: Object to 17 form. 18 <b>THE WITNESS: To associate</b> 19 <b>in defense of claims?</b> 20 BY MR. BROWN: 21 <b>Q. Yes.</b> 22 A. Yes, although I think that, 23 again, that's something that you alluded 24 to earlier that I would think varied from</p>

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<p>1 policy to policy in specific relation.  2 <b>Q. Okay. To your knowledge,</b>  3 <b>does Grace have any agreement with GEICO</b>  4 <b>pursuant to which GEICO gave up any of</b>  5 <b>its rights or ceded any of its rights</b>  6 <b>under the policies that appear page 7 of</b>  7 <b>Schedule 1 of Hughes-12?</b>  8 MS. HARDING: Object to  9 form.  10 THE WITNESS: Not to my  11 knowledge.  12 BY MR. BROWN:  13 <b>Q. And would your answer be the</b>  14 <b>same with respect to Republic?</b>  15 A. Yes.  16 <b>Q. To your knowledge, has GEICO</b>  17 <b>or Republic given up any of its claims</b>  18 <b>handling rights pursuant to any agreement</b>  19 <b>with Grace?</b>  20 MS. HARDING: Just objection  21 to form. That assumes facts not  22 in evidence.  23 But go ahead.  24 THE WITNESS: Not to my</p>	<p>1 for an exhaustive list.  2 MS. HARDING: Right.  3 THE WITNESS: As I said  4 earlier, I was responsible for the  5 day-to-day management and  6 resolution of the claims  7 internally. And as such, I worked  8 with the outside law firms in  9 litigating the cases and settling  10 cases, and internally I worked  11 with different groups within the  12 company to appropriately record  13 and manage the provision of  14 services from outside counsel  15 firms, payment of the firms,  16 payment of the settlements.  17 BY MR. BROWN:  18 <b>Q. Okay. What was the period</b>  19 <b>of time over which you had that role?</b>  20 A. I would say from 1989  21 through 19 -- excuse me -- through 2001,  22 April of 2001.  23 <b>Q. Okay. And that was the</b>  24 <b>petition date?</b></p>
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<p>1 knowledge.  2 BY MR. BROWN:  3 <b>Q. Okay. You indicated earlier</b>  4 <b>that your title is senior litigation</b>  5 <b>counsel; is that correct?</b>  6 A. Yes.  7 <b>Q. And I guess at the time of</b>  8 <b>the petition you reported to Mr. Siegel;</b>  9 <b>is that correct?</b>  10 A. Yes.  11 <b>Q. And he was the general</b>  12 <b>counsel at the time?</b>  13 A. Yes.  14 <b>Q. How would you describe your</b>  15 <b>responsibilities with respect to asbestos</b>  16 <b>personal injury claims pre-petition?</b>  17 MS. HARDING: I am just  18 going to object to the form to the  19 extent it's overly broad, requires  20 an overly broad interpretation.  21 But to the extent you can  22 answer it --  23 MR. LEWIS: I am not.  24 MR. BROWN: I am not asking</p>	<p>1 A. Yes.  2 <b>Q. Is it fair to say that you</b>  3 <b>are the person at Grace most</b>  4 <b>knowledgeable with respect to the manner</b>  5 <b>in which asbestos personal injury claims</b>  6 <b>were handled pre-petition?</b>  7 A. Yes.  8 <b>Q. Did Grace have national</b>  9 <b>coordinating counsel with respect to</b>  10 <b>asbestos bodily injury claims?</b>  11 A. It depends on how you define  12 national coordinating counsel. We had a  13 national -- Casner &amp; Edwards in Boston  14 handled all our documents, and Bob  15 Murphy, a partner there, would  16 participate in trials and work with  17 outside counsel. And there were some  18 other lawyers around the country who I  19 would call upon to do that as well.  20 <b>Q. Okay. I gather from your</b>  21 <b>answer that he didn't have the official</b>  22 <b>title national coordinating counsel?</b>  23 A. Well, also, I think after  24 1989, the outside counsel didn't report</p>

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1 to him. I view national coordinating  
2 counsel kind of strictly as I understand  
3 it is when the outside counsel in a  
4 particular jurisdiction report on a  
5 day-to-day basis to the firm, and then  
6 the national counsel, in turn, reports to  
7 the client and the corporation.

8 And we had it set up a  
9 little differently, that after 1989 --  
10 again, before that, I viewed Bob Murphy  
11 as serving what I would call traditional  
12 national coordinating counsel and that  
13 the outside firms reported to him. But  
14 we kind of reversed that.

15 **Q. Okay. If I understood your**  
16 **answer then, is it fair to say from 1989**  
17 **to 2001, that effectively you acted as**  
18 **the national coordinating counsel?**

19 A. Yeah, with the assistance of  
20 Casner & Edwards and Bob Murphy and  
21 others.

22 **Q. Mr. Finke, I believe,**  
23 **testified that in addition to Casner &**  
24 **Edwards Grace had approximately 25 other**

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1 **firms around the country that were**  
2 **defending Grace in various jurisdictions**  
3 **against asbestos PI claims.**

4 **Does that sound about right**  
5 **to you?**

6 A. It sounds a little low,  
7 actually, since there are 50 different  
8 states and then I think we had cases in  
9 virtually every state and in some  
10 jurisdictions, California, Texas, would  
11 have more than one counsel.

12 **Q. So what would be your**  
13 **estimate or number?**

14 A. My estimate would be 50.

15 **Q. Now, what was your**  
16 **interaction with each of those 50 or so**  
17 **law firms in terms of defending against**  
18 **asbestos claims?**

19 A. They would report on a  
20 regular basis in terms of developments,  
21 they would -- again, obviously when you  
22 talk about 50 firms, a lot of the level  
23 of activity of some of the firms was lot  
24 less than others.

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1 But, again, there were  
2 communications on the status of cases on  
3 what was going on, on working with Grace  
4 witnesses, expert, fact, was done through  
5 me. And I made the arrangements. The  
6 only exception to that was, again, with  
7 Casner & Edwards that the process worked  
8 that discovery responses, Grace's  
9 discovery responses in the underlying  
10 cases, those would be -- I would be  
11 copied on them. But they would be  
12 directly sent to Casner & Edwards and Bob  
13 Murphy or the associates at that firm  
14 that were actually prepared and would  
15 work directly with the local counsel in  
16 preparing responses.

17 **Q. Okay. Is it fair to say**  
18 **that you and the local firms, the 50 or**  
19 **so firms that you testified that defended**  
20 **Grace, and the Casner & Edwards firm**  
21 **acted as a group in the defense of**  
22 **asbestos claims asserted against Grace?**

23 A. Yes.

24 MS. HARDING: Object to

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1 form.

2 Go ahead.

3 BY MR. BROWN:

4 **Q. Can you describe for me the**  
5 **types of things that that group did in**  
6 **defending Grace against asbestos claims?**

7 A. Virtually everything an  
8 attorney would do representing the  
9 company in asbestos or any kind of toxic  
10 tort case. You know, they responded to  
11 complaints, they responded to discovery,  
12 they appeared on Grace's behalf at  
13 depositions, they tried cases, they  
14 negotiated settlements, they participated  
15 in defense groups.

16 **Q. Let me just give you an**  
17 **example. A complaint comes in the door.**  
18 **Was it the responsibility of whatever**  
19 **counsel was handling that particular case**  
20 **to look at the complaint, to see if the**  
21 **complaint had procedural defects or the**  
22 **statute of limitations had expired, to do**  
23 **those sort of things?**

24 A. Yeah. The complaints came

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1 and generally were served through us. I  
2 know some people had systems where local  
3 counsel accepted service. We did not do  
4 that.

5 We had a system where when  
6 the complaint was entered into the case  
7 management system, it automatically sent  
8 the complaint to the firm that had been  
9 designated as local counsel in that  
10 jurisdiction, and that local counsel,  
11 once they received the complaint, review  
12 the complaint and file an appropriate  
13 response and then handle the case.

14 **Q. And an appropriate response**  
15 **might be a motion to dismiss? It could**  
16 **be an Answer?**

17 A. It could be an Answer; it  
18 could be a motion to dismiss. You have  
19 to keep in mind we don't have to get --  
20 we have to keep in mind the asbestos  
21 personal injuries cases in a lot of  
22 jurisdictions, a lot of this was kind of  
23 institutionalized through case management  
24 orders that in some cases, all you had to

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1 do was enter an appearance. There  
2 wasn't -- some of the analysis because of  
3 the repetitious nature of it, that  
4 typically if I was involved in a lawsuit  
5 today as an in-house lawyer and sent it  
6 to somebody, we might sit down and talk  
7 about what the Answer is and what the  
8 allegations are.

9 In an asbestos case, again,  
10 because there were thousands of them --  
11 in some cases there were actually what I  
12 would call form Answers and form  
13 Complaints and so on. So it was highly  
14 managed by a case management order and  
15 the court.

16 **Q. Let me give you an example**  
17 **from my own experience and ask you**  
18 **whether Grace did these sort of things.**

19 I used to do some of the  
20 that work when I was a junior associate,  
21 and one of the things I was charged with  
22 was reviewing complaints and finding out  
23 if there were procedural defects with  
24 complaints. And sometimes the complaints

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1 **would come in in a box load and you would**  
2 **look through them and see if they made**  
3 **the statute of limitations, whether they**  
4 **had other procedural defects that might**  
5 **have been peculiar to the given**  
6 **jurisdiction, and, if appropriate, file**  
7 **motions, file preliminary objections.**  
8 **It's called different things in different**  
9 **jurisdictions.**

10 **Were your local counsel**  
11 **doing that sort of thing pre-petition?**

12 A. Yes.

13 MS. HARDING: Object to  
14 form. Are you asking him  
15 generally did that happen or did  
16 it happen with all cases?

17 MR. BROWN: I am trying to  
18 get a sense of how the cases were  
19 handled pre-petition, whether  
20 motions were filed if it was  
21 appropriate.

22 MS. HARDING: Right. But  
23 they have hundreds of thousands of  
24 cases. Are you just saying did

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1 that ever happen or are you asking  
2 if that happened in every case?

3 MR. BROWN: No.

4 MS. HARDING: I am asking  
5 you because it's not clear.

6 MR. BROWN: I am asking him  
7 whether in the course of  
8 evaluating a case that came in the  
9 door, whether it was the  
10 responsibility of counsel to look  
11 at it for procedural defects and,  
12 if appropriate, file a motion and  
13 if appropriate, file an answer.

14 THE WITNESS: Yes.

15 BY MR. BROWN:

16 **Q. You also mentioned**  
17 **discovery, and I think you said the**  
18 **Casner & Edwards firm, if I understood**  
19 **you correctly, handled Grace's responses**  
20 **to discovery; is that correct?**

21 A. Asbestos personal injury  
22 cases, yes.

23 **Q. Okay. How was the discovery**  
24 **that Grace took of claimants handled by**

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**you, by Casner & Edwards, and the other local firms that were defending cases?**

MS. HARDING: And I am just going to -- I think you have already taken this into consideration. I will object. To the extent it calls for attorney-client privilege or work product, do not answer. But I don't think you are asking him for that. So I just want to make it clear.

THE WITNESS: With a couple of exceptions, which were important but were relatively infrequent, it would be handled by the local counsel. The exceptions are that if we received the deposition notice of a Grace or fact witness of a Grace former employee or an expert, kind of a national asbestos personal injury expert, and we had specific expertise and the fact witness

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case would generally be Bob Murphy.

But we might have somebody from an outside firm that wasn't specifically assigned a jurisdiction to handle that. But in terms of coworker depositions, plaintiff depositions, developing discovery with respect to a particular job site, that would be handled by the local counsel.

BY MR. BROWN:

**Q. Okay. Do I gather from your answer that local counsel, for example, in written discovery depositions would inquire into exposure to Grace products?**

A. Yes.

**Q. Okay. And product ID sometimes called?**

A. Yes.

**Q. And how about medical issues?**

A. Well, as you may know, if you had some prior involvement with it,

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the answer to the question is yes, although in many jurisdictions and certainly in the major jurisdictions, there tended to be a joint medical defense group. And one firm or one particular -- lawyers would often handle some of the medical records issues and the medical testimony issues in the case on behalf of all of the defendants.

**Q. Okay. And did your local counsel look for other causes to a particular claimant's injury? For example, if they were a long-term smoker, would that be an issue that Grace pursued in discovery?**

A. Sure.

**Q. What other sort of defenses in that regard would Grace inquire into?**

A. Smoking, alternative exposures, history, you know, whether the person -- where the person worked and exposure to other people's products, questionable diagnoses in a meso case. We would have it sent out to somebody

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else to review the pathology. All the kinds of things that a defense lawyer in an asbestos case and just more broadly in a personal injury case would do.

They were given relatively broad, they being the local counsel, authority to act on Grace's behalf in defending the cases.

**Q. Were they told to zealously defend Grace?**

MS. HARDING: Well, object to the extent it calls for attorney-client communications.

THE WITNESS: I certainly hope I wouldn't have to tell people to do that since they are members of the bar and they have that ethical obligation.

But, yeah, they were certainly told -- there was a management process, and there were guidelines provided to them to some degree of what they wanted to do and what they shouldn't do.

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1 And there were things that I did  
2 in terms of resolving cases that  
3 would have taken them out.

4 But, yeah, I think they  
5 understood that they were to  
6 zealously defend it, and we had  
7 some very good lawyers  
8 representing us.

9 BY MR. BROWN:

10 **Q. And was it your**  
11 **responsibility internally to make certain**  
12 **that that happened?**

13 A. Yes.

14 **Q. Now, did you work with any**  
15 **asbestos plaintiffs lawyers? When I say**  
16 **work with them, did you have interaction**  
17 **with any of the big guns in the asbestos**  
18 **bar?**

19 A. Personally?

20 **Q. Yes.**

21 A. Yes.

22 **Q. Who?**

23 A. And I was alluding to this  
24 earlier. Most of them, certainly in

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1 terms of the inventory settlement  
2 agreements and when we got into the  
3 process of settling larger groups, local  
4 defense counsel on the asbestos personal  
5 injury cases, when it's comes to  
6 resolving larger groups, have kind of  
7 conflicting motivations.

8 On one hand, they want to do  
9 their client a good service, and they  
10 want to get rid of cases as cheaply as  
11 possible, but on the other hand,  
12 inventory settlements where we might buy  
13 up or settle the docket for six months,  
14 eight months, even two, three months,  
15 settlements like that cause the defense  
16 lawyers to lose billable hours in terms  
17 of their own businesses, lawyers.

18 So when we started getting  
19 into those negotiations in the larger  
20 groups, I would handle them personally.  
21 And it was generally in that capacity  
22 that I dealt directly with plaintiffs'  
23 lawyers.

24 **Q. Okay.**

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1 A. And I dealt with most of  
2 them, at least at that time. It's been  
3 eight years. I am sure it's a new group.  
4 But at that point, many of them.

5 **Q. I am not so sure.**

6 **Give me some examples.**

7 A. You can go down  
8 geographically. I know Perry Weitz, and  
9 I have met with Perry Weitz. I know Joe  
10 Rice. I know Greitzer & Locks. I have  
11 dealt with Dino Vovet (phonetic), Peter  
12 Angelos' firm many times. I used to know  
13 Mike Kelly who has passed away. I know  
14 Jim Ferraro. I know Irving Gonzalez, who  
15 is in jail. I know -- who else? I have  
16 dealt with -- I know Russell Budd and  
17 Fred Baron. I have dealt with Peter  
18 Krauss.

19 **Q. You mentioned Mr. Cooney**  
20 **earlier, I think.**

21 A. Cooney, I know John Cooney.  
22 I have met with him.

23 **Q. Any others that you can**  
24 **think of?**

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1 A. There is probably others I  
2 have met with, and I have missed some.  
3 But there are some that I haven't met,  
4 either because we didn't get into those  
5 kinds of discussions or I was comfortable  
6 with the ability of our local counsel to  
7 negotiate cases and just the need for me  
8 to meet with them didn't arise.  
9 Particularly in California, the  
10 traditional California firms, I don't  
11 recall meeting working with Steve Casner,  
12 and there are others out there.

13 **Q. All right. Again, we are**  
14 **still focused on the pre-petition time**  
15 **frame.**

16 **Was Grace required to obtain**  
17 **the consents of any of the members of the**  
18 **plaintiffs bar with respect to the manner**  
19 **in which Grace defended itself against**  
20 **asbestos claims, any of the gentlemen you**  
21 **just mentioned?**

22 MS. HARDING: Object to  
23 form.

24 THE WITNESS: You will have

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1 to repeat that.

2 MR. LEWIS: We will have it  
3 read back.

4 (The reporter read from the  
5 record as requested.)

6 MS. HARDING: I am sorry.

7 MR. LEWIS: I am sorry. I  
8 don't understand the question.

9 MR. BROWN: You are not  
10 answering it.

11 MR. LEWIS: I just object to  
12 the question as unintelligible as  
13 stated.

14 MR. BROWN: Do you  
15 understand the question?

16 THE WITNESS: I think so.

17 I think the answer is no,  
18 although they would occasionally  
19 volunteer information to tell  
20 Grace how to defend cases.

21 BY MR. BROWN:

22 **Q. And you didn't seek their  
23 consent?**

24 A. No.

Page 339

1 **Q. Did the plaintiffs bar  
2 participate in the internal  
3 decision-making regarding the manner in  
4 which Grace defended asbestos claims  
5 pre-petition?**

6 A. No.

7 **Q. Did Grace leave it up to the  
8 plaintiffs' attorneys to decide how much  
9 Grace would pay for a claim?**

10 A. No.

11 **Q. Did Grace consult with the  
12 plaintiffs bar with respect to the manner  
13 in which Grace and its outside counsel  
14 defended claims?**

15 A. No.

16 **Q. Did the plaintiffs'  
17 attorneys decide what medical criteria  
18 were satisfactory for a settlement with  
19 Grace?**

20 A. It was a product of  
21 negotiation if there were inventory  
22 settlements that had specific objective  
23 medical criteria. They didn't dictate to  
24 Grace what the medical criteria was.

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1 **Q. How about the exposure  
2 criteria? Did that dictate that to  
3 Grace?**

4 A. No, they didn't.

5 **Q. Did they dictate to Grace  
6 the types of proofs that Grace would  
7 accept for a settlement?**

8 A. Again, it was a negotiation.  
9 But, no, they didn't dictate it.

10 **Q. Did they decide what type of  
11 release Grace would accept in exchange  
12 for a settlement?**

13 A. No. It's a negotiation.

14 **Q. All right. Again,  
15 pre-petition, your title was senior  
16 litigation counsel?**

17 A. Yes.

18 **Q. Okay. Did the plaintiff's  
19 attorney have the power to remove you if  
20 they didn't like the way you were  
21 handling the defense of Grace claims?**

22 MS. HARDING: Objection.

23 It's relevance at this point.

24 Go ahead.

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1 THE WITNESS: No, they  
2 didn't.

3 BY MR. BROWN:

4 **Q. Did they control how much  
5 you were paid for your job at Grace?**

6 A. No.

7 MR. BROWN: I might be  
8 finished. Let me have a couple of  
9 minutes.

10 (There was a break from 4:11  
11 p.m. to 4:16 p.m.)

12 BY MR. BROWN:

13 **Q. Mr. Hughes, can I ask you to  
14 take a look at what was previously marked  
15 Hughes-3?**

16 A. (Witness complies with  
17 request.)

18 MS. HARDING: Exhibit 4 to  
19 the Exhibit Book.

20 MR. LEWIS: Exhibit 4 to the  
21 Exhibit Book, which is Exhibit-3  
22 to the deposition.

23 BY MR. BROWN:

24 **Q. Mr. Hughes, Exhibit-3, there**

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1 was a question earlier today. It's the  
2 Trust Distribution Procedures, correct?

3 A. Yes.

4 Q. And I think you indicated  
5 that you did not draft this document; do  
6 I have that correct?

7 A. Yes.

8 Q. I believe you said the ACC,  
9 asbestos claimants committee, drafted the  
10 document; is that correct?

11 MR. LIESEMER: Object to the  
12 form of the question.

13 THE WITNESS: That was my  
14 understanding, yes.

15 BY MR. BROWN:

16 Q. Okay. And you indicated  
17 that you had reviewed the document?

18 A. Yes, I have.

19 Q. And if I remember your  
20 testimony correctly, you indicated that  
21 you were given an opportunity to comment  
22 on the document?

23 A. Yes.

24 Q. I believe you also stated

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1 that you didn't recall any comment that  
2 you had on the document; is that correct?

3 A. I didn't recall any specific  
4 comment. I recall that there were some  
5 comments I had made.

6 Q. Okay. Do you recall what  
7 those comments were?

8 A. Not as I sit here today, no.

9 Q. Okay. I think you were also  
10 asked who else at Grace reviewed the  
11 document, and I believe your answer was  
12 your outside counsel did, reviewed it; do  
13 I have that right?

14 A. Yes.

15 Q. Other than you and your  
16 outside counsel, are you aware of anyone  
17 else that reviewed and drafted the TDP on  
18 the Grace side?

19 A. I don't know if Richard  
20 Finke or Mark Shelnitz, our general  
21 counsel, had taken a look at it at that  
22 time. Perhaps Richard was asked about  
23 that question when he was deposed. But  
24 they would be the other logical

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1 candidates who may have taken a look at  
2 it.

3 Q. Okay. And the Trust  
4 Distribution Procedures are the  
5 procedures pursuant to which asbestos  
6 personal injury claims are to be handled  
7 if the Plan is confirmed, correct?

8 A. Right, by the Trust.

9 MR. BROWN: Okay. All  
10 right. I am going to pass you to  
11 Mr. Cohn. Thank you.

12 - - -

13 EXAMINATION

14 - - -

15 BY MR. JACOB COHN:

16 Q. Good afternoon, Mr. Hughes.  
17 Jacob Cohn for Federal Insurance Company.  
18 How are you?

19 MS. HARDING: Did you all  
20 join in somebody's 30(b)(6)?

21 MR. JACOB COHN: No. I am  
22 participating as a party in  
23 interest here.

24 MS. HARDING: So just to be

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1 clear, you didn't notice the dep  
2 and you didn't join anybody else's  
3 notice?

4 MR. JACOB COHN: No. I am  
5 just a party to the case, and I  
6 came to the deposition. And I am  
7 entitled to cross-examine, so I  
8 am.

9 BY MR. JACOB COHN:

10 Q. Now, Mr. Hughes --

11 MS. HARDING: There are a  
12 lot of people who want to ask  
13 questions today. Do you have a  
14 sense of how long it will take?

15 MR. JACOB COHN: I would  
16 think no more than 15 to 20  
17 minutes, hopefully less.

18 MS. HARDING: All right. I  
19 think in the interest of not  
20 having to come back, I will go  
21 forward, but I --

22 MR. JACOB COHN: You are  
23 burning --

24 MS. HARDING: I will State

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1 an objection on the record that  
2 you didn't notice the deposition.

3 MR. JACOB COHN: I don't  
4 understand that to be a bona fide  
5 deposition objection.

6 MS. DeCRISTOFARO: At one  
7 point, there was an email that  
8 said in the interest of not having  
9 a notice, that not everyone needed  
10 to serve separate notices.

11 MR. JACOB COHN: Everything  
12 is on the record.

13 BY MR. JACOB COHN:

14 Q. From 1989 to 2001, you were  
15 principally in charge of handling  
16 asbestos claims against Grace, correct?

17 A. Asbestos personal injury  
18 claims, yes.

19 Q. And from 1989 to 2001 Grace  
20 was a for-profit business corporation,  
21 correct?

22 A. Yes.

23 Q. So your goal was to minimize  
24 the amount of money that Grace had to pay

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1 in the defense and settlement and  
2 resolution of asbestos PI claims,  
3 correct?

4 A. Yes.

5 Q. Now, just looking for a  
6 moment at what was marked Hughes-12,  
7 which is Exhibit 6 to the Exhibit Book  
8 from the Plan, if you would just take a  
9 quick look at the Schedule 2.

10 Now, Schedule 2, am I  
11 correct, these are insurance companies  
12 that had settlement agreements where they  
13 paid a lump sum of money to Grace and  
14 received a release for policy obligation;  
15 would that be correct?

16 A. That's my understanding.

17 Q. Okay. And, for example,  
18 Federal Insurance Company, my client, has  
19 a settlement for one of its policies, and  
20 I will represent to you that they paid  
21 \$300,000 in 1997 to settle a \$500,000  
22 sub-limit.

23 Now, that \$300,000 was put  
24 into Grace's treasury; is that right?

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1 MS. HARDING: Object to form  
2 and foundation.

3 MR. JACOB COHN: Whatever.  
4 You can answer.

5 THE WITNESS: I assume so,  
6 yes.

7 BY MR. JACOB COHN:

8 Q. So that became part of the  
9 money that would be available to you,  
10 whatever settlement would come in to pay  
11 for the resolution of asbestos PI claims,  
12 correct?

13 MS. HARDING: Object to  
14 form.

15 THE WITNESS: Well, again, I  
16 don't -- yeah. I mean, perhaps  
17 indirectly. But there was  
18 \$300,000 that was settled and  
19 \$300,000 was entered -- became  
20 Grace's property, and Grace  
21 settled cases as part of its  
22 business operations.

23 BY MR. JACOB COHN:

24 Q. And Grace would typically

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1 have to promise the insurer to use those  
2 funds to pay for the resolution of  
3 asbestos claims; is that accurate?

4 MS. HARDING: Object to  
5 form, in terms of typically.

6 THE WITNESS: Yeah, I guess  
7 it's an accounting matter they  
8 would apply it to asbestos  
9 liabilities.

10 BY MR. JACOB COHN:

11 Q. All right. Now, Schedule 3  
12 is listed as schedule Asbestos Insurance  
13 Reimbursement Agreements, right?

14 A. Right.

15 Q. Now, those are what would be  
16 typically called a coverage in place  
17 agreement; would you agree with that  
18 terminology?

19 A. Yes.

20 Q. Okay. So as I understand  
21 from Grace's Securities and Exchange  
22 Commission filings, most of these  
23 agreements require the insurer to pay a  
24 portion of every claim that Grace settles

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1 **that triggers their policy; would that be**  
2 **right?**

3 MS. HARDING: Object to form  
4 and object to asking him questions  
5 about generally insurance  
6 settlement agreements.

7 MR. JACOB COHN: Okay.

8 MS. HARDING: Every  
9 agreement is different.

10 MR. JACOB COHN: That's  
11 fine.

12 BY MR. JACOB COHN:

13 **Q. Can I rely upon Grace's SEC**  
14 **filings?**

15 A. Yes.

16 **Q. Okay. So can you describe**  
17 **to me the policies that are identified in**  
18 **those filings as policies that pay on a**  
19 **pro rata basis, how the money would be**  
20 **spent and recouped from those insurers?**

21 MS. HARDING: Object to  
22 form.

23 THE WITNESS: We certainly  
24 had arrangements with insurance

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1 companies that provided that they  
2 would pay us a percentage or a pro  
3 rata portion of the money we spent  
4 that triggered their policy that  
5 we spent on asbestos claims.

6 BY MR. JACOB COHN:

7 **Q. And Grace itself paid a**  
8 **portion of every dollar that was spent to**  
9 **resolve an asbestos claim, correct?**

10 A. I think we generally paid it  
11 in the first instance and was reimbursed  
12 under these kinds of agreements, but yes.

13 **Q. And typically how much of**  
14 **every dollar that you paid out would you**  
15 **be reimbursed from one of these**  
16 **agreements?**

17 MS. HARDING: Object to  
18 form, foundation.

19 Go ahead.

20 THE WITNESS: Again, it  
21 would vary, but based on valuation  
22 we do on the 1.7 billion and the  
23 500 million I referred to earlier,  
24 I think 25 cents on the dollar, 30

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1 cents on the dollar.

2 BY MR. JACOB COHN:

3 **Q. Would come back in?**

4 A. Again, it would vary  
5 depending on where we were in terms of  
6 the coverage, yes, we would be  
7 reimbursed. And it varied when, you  
8 know, during the time period. There is a  
9 lot of factors that go into that. And I  
10 don't think you can answer it  
11 definitively, but it certainly would be  
12 in the range I mentioned for some period  
13 of the time.

14 **Q. And Grace believed it could**  
15 **do a better job of handling the claims by**  
16 **itself without having the insurers be**  
17 **involved; is that accurate?**

18 MS. HARDING: Object to  
19 form.

20 THE WITNESS: Whether or not  
21 we thought we could do a better  
22 job or the insurance carriers  
23 would prefer that we did it, the  
24 evolution of it was that Grace

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1 handled it itself?

2 BY MR. JACOB COHN:

3 **Q. Okay. And at all times,**  
4 **while you were there, Grace endeavored to**  
5 **minimize the amount of money it had paid**  
6 **to resolve asbestos claims; is that fair**  
7 **to say?**

8 A. Yes.

9 **Q. Now, in 2005, there was a**  
10 **conference call between Grace and its**  
11 **insurers. Were you a participant in that**  
12 **call?**

13 A. I don't specifically recall,  
14 but I may have been.

15 **Q. Do you remember any**  
16 **discussion between Grace and its insurers**  
17 **to the effect that Grace was not ready to**  
18 **deal with its high level excess insurers?**

19 A. In what sense not ready?

20 **Q. In the sense of, in the**  
21 **course of the bankruptcy proceedings,**  
22 **W.R. Grace communicating that sentiment**  
23 **to its non-settled high level insurers?**

24 A. I don't recall that

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1 conversation.

2 **Q. You said you were given a**  
 3 **chance to review the TDPs in 2008 -- I am**  
 4 **sorry. Was it 2008?**

5 A. Yeah, it would have been  
 6 2008.

7 **Q. Okay. Now, at that point in**  
 8 **time, Grace's obligations pursuant to the**  
 9 **settlement it reached in April 2008 were**  
 10 **established, correct?**

11 MS. HARDING: Object to  
 12 form.

13 THE WITNESS: Yes. There  
 14 had been a Term Sheet and an  
 15 agreement reached.

16 BY MR. JACOB COHN:

17 **Q. There was a defined amount**  
 18 **of money and other things that Grace was**  
 19 **going to give to the Trust to settle its**  
 20 **asbestos liabilities; is that right?**

21 A. Yes.

22 MS. HARDING: Well, just  
 23 object to form.

24 THE WITNESS: Asbestos

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1 personal injury liabilities.

2 BY MR. JACOB COHN:

3 **Q. And is it fair to say that**  
 4 **thereafter, the most significant interest**  
 5 **that Grace had in the TDPs was insuring**  
 6 **that it obtained the 75 percent or**  
 7 **greater vote from the asbestos PI**  
 8 **claimants?**

9 MS. HARDING: Object to  
 10 form.

11 THE WITNESS: It was  
 12 important to Grace that we emerge  
 13 from bankruptcy and that the Trust  
 14 and so on and the Plan proceed so  
 15 that the reorganized company could  
 16 emerge from bankruptcy and be free  
 17 from its asbestos liabilities.  
 18 That was the purpose of the  
 19 Chapter 11, and that was obviously  
 20 Grace's interest.

21 BY MR. JACOB COHN:

22 **Q. So is the answer to my prior**  
 23 **question yes, getting 75 percent super**  
 24 **majority approval by the asbestos**

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1 **constituencies was the most important**  
 2 **consideration to Grace in reviewing the**  
 3 **TDPs?**

4 MR. LIESEMER: Object to the  
 5 form.

6 MS. HARDING: Object to the  
 7 form.

8 THE WITNESS: I think that  
 9 the most important consideration  
 10 to Grace in the TDP was that they  
 11 were, from a legal standpoint,  
 12 sufficiently consistent with, to  
 13 the extent they had to be,  
 14 consistent with the prior practice  
 15 and that they were a reasonable  
 16 means of processing and paying  
 17 claims so that the Plan would be  
 18 confirmed.

19 BY MR. JACOB COHN:

20 **Q. So it was important at this**  
 21 **point -- strike that.**

22 **At this point, Grace had no**  
 23 **additional financial interest in how**  
 24 **asbestos claims were handled; is that**

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1 **correct?**

2 MS. HARDING: Object to the  
 3 form.

4 THE WITNESS: Well, that's  
 5 not necessarily correct. But we  
 6 certainly had -- since our  
 7 obligation to fund the Trust,  
 8 personal injury Trust, was fixed,  
 9 both in terms of the payments that  
 10 were to be made at the time of  
 11 emergence and the payments off in  
 12 the future, then I guess to that  
 13 extent, yeah, we had already  
 14 established what our liability  
 15 was. And our concern was that the  
 16 Trust Distribution Procedures were  
 17 met whatever legal criteria that  
 18 were necessary and that the Plan  
 19 be confirmed.

20 BY MR. JACOB COHN:

21 **Q. So as of the time that the**  
 22 **settlement was reached, your concern with**  
 23 **the TDPs was that they enable a Plan to**  
 24 **be confirmed in a way that would enable**

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1 **Grace to have finality with respect to**  
 2 **its asbestos obligations and emerge as a**  
 3 **for-profit corporation again?**

4 MS. HARDING: Object to  
 5 form. I think it mischaracterizes  
 6 and doesn't completely accurately  
 7 summarize what he just said  
 8 regarding legal criteria.

9 BY MR. JACOB COHN:

10 **Q. Would you agree with what I**  
 11 **just said?**

12 A. No. We operated in  
 13 bankruptcy as a for-profit company. I  
 14 think our goal would be to operate as a  
 15 corporation unencumbered by asbestos  
 16 liabilities.

17 MR. JACOB COHN: No further  
 18 questions. Thanks.

19 - - -

20 EXAMINATION

21 - - -

22 BY MS. SIMON:

23 **Q. Good afternoon. My name is**  
 24 **Marnie Simon. I represent Fireman's Fund**

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1 **Insurance Company and the Allianz related**  
 2 **entities.**

3 A. Sure.

4 **Q. I believe you testified when**  
 5 **speaking with Michael Brown that**  
 6 **reviewing the GEICO policies under, I**  
 7 **think it was, Exhibit-12 here and Exhibit**  
 8 **6 to the Plan Asbestos Insurance Transfer**  
 9 **Agreement, I believe you testified there**  
 10 **that to your knowledge, GEICO had not --**  
 11 **there were no agreements between Grace**  
 12 **and GEICO in terms of GEICO ceding or**  
 13 **waiving its rights under those excess**  
 14 **policies; is that correct?**

15 A. Yes.

16 **Q. And would you answer --**

17 A. That I was aware of.

18 **Q. That you were aware of.**

19 **And would your answer be the**  
 20 **same for the Fireman's Fund and Allianz**  
 21 **companies?**

22 A. You are talking with respect  
 23 to the excess insurance policies?

24 **Q. The excess policies of**

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1 **Allianz on page 1 of Schedule 1, the**  
 2 **Fireman's Fund policies on page 7 of**  
 3 **Schedule 1, and then the Reunion -**  
 4 **Adriatica policy on page 16.**

5 MS. MAHALEY: I object to  
 6 the form of the question.  
 7 BY MS. SIMON:

8 **Q. Are you aware of any**  
 9 **agreements with those insurance companies**  
 10 **to waive their rights under their excess**  
 11 **policies that was in place with Grace**  
 12 **pre-petition?**

13 A. No, I am not.

14 MS. HARDING: Object to  
 15 form.

16 MS. SIMON: That's all.

17 - - -

18 EXAMINATION

19 - - -

20 BY MS. McCABE:

21 **Q. Good afternoon, Mr. Hughes.**  
 22 **My name is Eileen McCabe, and I here**  
 23 **today --**

24 A. I remember you Eileen.

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1 **Q. I am here today on behalf of**  
 2 **AXA Belgium as a successor to Royale**  
 3 **Belge.**

4 **And just to make this go**  
 5 **quickly, if I could follow up with the**  
 6 **same questions that were just asked to**  
 7 **you with regard to the Royale Belge**  
 8 **policies that appear on page 16 of what's**  
 9 **been designated Hughes Exhibit-12. There**  
 10 **are three policies that are identified**  
 11 **there for excess policies.**

12 **Are you aware of any**  
 13 **agreement that Royale Belge had**  
 14 **pre-petition pursuant to Royale Belge**  
 15 **ceded or waived any of its excess**  
 16 **policies as listed on that policy?**

17 MS. HARDING: Object to  
 18 form.

19 THE WITNESS: No, I am not.

20 MS. McCABE: That's it.

21 - - -

22 EXAMINATION

23 - - -

24 BY MR. SCHIAVONI:

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1 was correct, that you didn't -- it  
2 was one of those backwards things.

3 THE WITNESS: Sorry.

4 BY MR. SCHIAVONI:

5 **Q. Some of your data may be in**  
6 **Exhibit-1, but you didn't prepare**  
7 **Exhibit-1 and you didn't supervise the**  
8 **preparation of Exhibit-1; is that right?**

9 A. I did not prepare Exhibit-1,  
10 nor did I supervise the preparation of  
11 Exhibit-1.

12 **Q. The 1995 Grace/Royal**  
13 **settlement covered policies issued to the**  
14 **Zonolite Company; is that generally**  
15 **right?**

16 A. Yes.

17 **Q. Okay. Are you aware whether**  
18 **Royal's also alleged to have issued,**  
19 **entirely separate from that, a high level**  
20 **excess policy in the 1980s to Grace?**

21 A. I learned that in connection  
22 with the bankruptcy. I am not sure I  
23 knew that beforehand.

24 **Q. Okay. But sitting here**

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1 **today, you are familiar with the fact**  
2 **that there is a separate high level**  
3 **excess policy that Royal has issued in**  
4 **'80s to Grace; is that right?**

5 A. I believe so, yes.

6 **Q. And Mr. Brown asked you some**  
7 **questions about whether or not rights to**  
8 **associate in the defense and to**  
9 **cooperated had been ceded by his clients**  
10 **to Grace.**

11 **Do you remember those**  
12 **questions generally?**

13 MS. HARDING: Object to  
14 form.

15 But go ahead.

16 MR. SCHIAVONI: All right.

17 THE WITNESS: There are  
18 questions about it. I think the  
19 question was whether we had waived  
20 or all agreed, and the answer was  
21 no, I wasn't aware of any such  
22 agreement.

23 BY MR. SCHIAVONI:

24 **Q. Has either Royal or**

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1 **Arrowwood ceded or in any way waived or**  
2 **given up any of its rights to associate**  
3 **in the defense or cooperate or any other**  
4 **rights under its high level excess**  
5 **policy?**

6 A. Not that I am aware of.

7 MS. HARDING: Object the  
8 form with respect to rights.

9 BY MR. SCHIAVONI:

10 **Q. And am I correct that prior**  
11 **to the bankruptcy filing, Grace hadn't**  
12 **tendered any claims to Royal under that**  
13 **high level excess policy?**

14 A. I don't know the extent to  
15 which we were tendered claims  
16 pre-petition to high level excess  
17 policies. Generally, the notice of the  
18 claims was done by our insurance broker.

19 **Q. Okay. So you don't know one**  
20 **way or the other?**

21 A. I don't.

22 MR. SCHIAVONI: That's all I  
23 have. Thank you, Mr. Hughes.

24 - - -

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1 EXAMINATION

2 - - -

3 BY MR. IFFT:

4 **Q. Good afternoon, Mr. Hughes.**

5 A. Good afternoon.

6 **Q. My name is Richard Ifft. I**  
7 **represent Maryland Casualty Company and**  
8 **two Zurich entities, Zurich Insurance**  
9 **Company and Zurich Insurance Bermuda**  
10 **Company.**

11 A. Okay.

12 **Q. I am not, I think, going to**  
13 **ask many questions about Maryland**  
14 **Casualty today.**

15 **With respect to Zurich, I**  
16 **will represent to you that the two Zurich**  
17 **entities issued a number of high level**  
18 **excess policies, and I will direct your**  
19 **attention to what we have marked as**  
20 **Exhibit-12, the Exhibit 6 to the Exhibit**  
21 **Book for the Plan.**

22 **Directing your attention to**  
23 **Schedule 1, page 20, you will see there**  
24 **is about 11 or so participations on that**

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1 last page.

2 A. Yes.

3 Q. If I were to ask you the  
4 same questions that other carriers have  
5 asked you, if you are aware of any  
6 waivers by any of the Zurich entities of  
7 their rights under the policy, are you  
8 aware of that with respect to those  
9 policies?

10 A. No, I am not.

11 MS. HARDING: Object to  
12 form --

13 MR. LIESEMER: Object to  
14 form.

15 MS. HARDING: -- as to  
16 rights.

17 BY MR. IFFT:

18 Q. You are aware, Mr. Hughes,  
19 that the excess insurers under their  
20 policies typically have certain rights  
21 with respect to their ability to be  
22 involved with respect to the handling of  
23 the claims against Grace?

24 A. Yes.

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1 MR. LIESEMER: Object to the  
2 form.

3 BY MR. IFFT:

4 Q. And is it your testimony  
5 that you are not aware of any waiver of  
6 any such rights by the Zurich companies  
7 with respect to their policies?

8 MS. HARDING: Object to form  
9 again.

10 But go ahead.

11 MR. IFFT: You can answer.

12 THE WITNESS: I am not aware  
13 of any.

14 BY MR. IFFT:

15 Q. Let me direct your attention  
16 to Schedule 3. I will represent to  
17 you that this is the Schedule of Asbestos  
18 Insurance Reimbursement Agreements, and  
19 you will see at the bottom there is one  
20 agreement with Zurich International with  
21 respect to, I will represent to you, one  
22 of those 11 policies.

23 Do you happen to be familiar  
24 with that agreement, sitting here today?

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1 A. No, I am not.

2 Q. I think you testified that  
3 you had some familiarity with Asbestos  
4 Insurance Reimbursement Agreements  
5 generally, correct?

6 A. Yes.

7 Q. And what's your  
8 understanding as to how those typically  
9 work?

10 A. They typically would work  
11 that as the costs were incurred under --  
12 we would agree in terms of how it was  
13 allocated, but Grace had a model in terms  
14 of how the terms were allocated on  
15 different policies. And to the extent  
16 the policy was triggered that the party,  
17 in this case Zurich International, would  
18 pay Grace or reimburse Grace for some  
19 portion of the costs that were incurred  
20 for those claims.

21 Q. Pursuant to a defined  
22 percentage in the agreement?

23 A. Defined percentage,  
24 generally, yes.

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1 Q. Do those agreements also  
2 typically have any provisions that on  
3 their face alter the rights that  
4 otherwise might exist under the policy  
5 with respect to the insurer's involvement  
6 in the claims?

7 MS. HARDING: Object to  
8 form.

9 MR. LIESEMER: Join.

10 THE WITNESS: I think that  
11 would vary. My understanding  
12 would be generally no, but I think  
13 that it certainly -- I would have  
14 to look at the individual  
15 agreement to comfortably say that.  
16 BY MR. IFFT:

17 Q. Okay. You are not sure,  
18 sitting here today?

19 A. I am not sure, but you are  
20 also ask asking me specifically about  
21 agreements. And your other questions  
22 were generally in the absence, but here  
23 there were agreements. And I have to  
24 look at the individual agreements before

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1 making a blanket statement about what  
2 they provide and what they don't provide.

3 **Q. Fair enough. They may or**  
4 **may not have, and you would have to look**  
5 **at the agreement?**

6 A. Right.

7 MR. IFFT: I don't have  
8 anything further.

9 - - -

10 EXAMINATION

11 - - -

12 BY MS. DeCRISTOFARO:

13 **Q. Good afternoon, Mr. Hughes,**  
14 **my name is Elizabeth DeCristofaro. I**  
15 **represent a group of insurance companies,**  
16 **Continental Insurance Company,**  
17 **Continental Casualty, generally referred**  
18 **to as the CNA Insurance Companies.**

19 **And you are familiar that**  
20 **the CNA Insurance Companies issued**  
21 **insurance policies to Grace?**

22 A. Yes.

23 **Q. I am trying to do this**  
24 **without having to take you through a**

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1 number of names and policies.

2 **You are aware that some of**  
3 **the policies issued by the CNA Companies**  
4 **to Grace were high level excess policies;**  
5 **is that correct?**

6 A. Yes.

7 **Q. And there has been no**  
8 **settlement or other agreements affecting**  
9 **those high level high level excess**  
10 **policies; is that correct?**

11 MS. HARDING: Object to  
12 form.

13 Go ahead.

14 THE WITNESS: That's my  
15 understanding, yes.

16 BY MS. DeCRISTOFARO:

17 **Q. So to follow up on the**  
18 **questions you were asked previously, you**  
19 **are not aware of any agreement in which**  
20 **the companies that issued those high**  
21 **level excess policies waived or**  
22 **surrendered any rights under those**  
23 **policies?**

24 MR. LIESEMER: Object to

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1 form.

2 MS. HARDING: Object the  
3 form.

4 THE WITNESS: No, I am not  
5 aware of any agreement.

6 MS. DeCRISTOFARO: Then I  
7 have no further questions.

8 MS. HARDING: We are done in  
9 the room. Elisa, do you want to  
10 go?

11 - - -

12 EXAMINATION

13 - - -

14 BY MS. ALCABES:

15 **Q. Hi. This is Elisa Alcabes**  
16 **from Simpson, Thacher & Bartlett, Mr.**  
17 **Hughes. I am counsel for Travelers**  
18 **Casualty and Surety Company previously**  
19 **known AETNA.**

20 A. Yes.

21 **Q. You mentioned before that**  
22 **you had involvement in the reimbursement**  
23 **agreement pre-petition; is that correct?**

24 A. Yes.

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1 **Q. And I believe you said that**  
2 **you were in part responsible for insuring**  
3 **that Grace undertook its obligations**  
4 **under the reimbursement agreement?**

5 A. Yes. And I was involved in  
6 disputes that arose concerning those  
7 obligation.

8 **Q. With respect to allocation,**  
9 **I believe you just mentioned that there**  
10 **was a model that Grace used; is that**  
11 **correct?**

12 MS. HARDING: Object to  
13 form. It misstates the testimony  
14 but go ahead.

15 THE WITNESS: Yes.

16 BY MS. ALCABES:

17 **Q. Can you just explain a**  
18 **little bit more how Grace allocated or**  
19 **performed allocation that was necessary**  
20 **under the reimbursement agreement?**

21 A. I can tell you who did it, I  
22 can tell you that it was done, but I  
23 can't give you specifics and the details  
24 of how that was done.

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1 I think that's a question  
2 that's overly broad, and I think  
3 it really -- it's specific to an  
4 insurance company and to law firms  
5 and to jurisdictions.

6 But, again, we worked with  
7 insurance companies in settling  
8 and resolving these claims and  
9 resolving their coverage over the  
10 course of the 15, 20 years I was  
11 involved in it.

12 BY MR. LEWIS:

13 **Q. Did any insurer that had**  
14 **coverage for Grace, any insurer, object**  
15 **to the manner in which you were**  
16 **conducting the defense of the claims for**  
17 **asbestos-related disease against Grace?**

18 MR. SCHIAVONI: Object to  
19 form.

20 THE WITNESS: None that I  
21 recall.

22 MR. LEWIS: That's all I  
23 have.

24 MR. BROWN: Let's mark

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1 Hughes Exhibit-12.

2 BY MR. BROWN:

3 **Q. Can you go to Schedule 1 of**  
4 **that document?**

5 A. Yes.

6 **Q. And specifically, page 18, I**  
7 **direct your attention down toward the**  
8 **bottom of the document, you will see**  
9 **Unigard Security.**

10 **Do you see that?**

11 A. Yes.

12 **Q. And do you see in the policy**  
13 **number column that there are two policies**  
14 **listed?**

15 A. Yes.

16 **Q. Okay. There is one 1-0589**  
17 **and 1-2517. Do you see those?**

18 A. Yes.

19 **Q. Now, could you go to what's**  
20 **been marked as Exhibit-15, which is**  
21 **Exhibit 5 to the Exhibit Book, and turn**  
22 **to page 9.**

23 **If you see at the bottom of**  
24 **that there is a reference there to two**

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1 Hughes-15.

2 (Hughes-15 marked for  
3 identification at this time.)

4 MS. HARDING: Just to save  
5 time, again, Exhibit 5 to the Plan  
6 was topic upon which Mr. Finke was  
7 designated to testify and I think  
8 did. But to the extent that the  
9 witness can answer the questions  
10 related to it, go ahead.

11 MR. BROWN: It's an  
12 insurance-related question.

13 MS. HARDING: I understand.

14 - - -

15 EXAMINATION

16 - - -

17 BY MR. BROWN:

18 **Q. Mr. Hughes, can you look at**  
19 **what's been marked Exhibit-6, Schedule 1,**  
20 **we talked about that earlier? I think**  
21 **that's 5 there in front of you.**

22 A. Yes.

23 **Q. If you look at Exhibit 6.**

24 MS. HARDING: Which is

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1 **settlement agreements for Unigard**  
2 **Security Insurance Company? Do you see**  
3 **those?**

4 A. Yes.

5 **Q. And it says "now known as**  
6 **Seaton"?**

7 A. Yes.

8 **Q. Okay. Do you understand**  
9 **those two settlement agreements to**  
10 **pertain to the two policies that are on**  
11 **the first exhibit that I had you look at?**

12 MS. HARDING: Object on  
13 foundation, to the extent that you  
14 know. And --

15 BY MR. BROWN:

16 **Q. You can look at the policy**  
17 **numbers.**

18 A. Yeah, they have the same  
19 policy numbers.

20 **Q. Okay. Now, would you look**  
21 **at Schedule 2 to Exhibit 6? Do you see**  
22 **that there are two settlement agreements**  
23 **listed there for Unigard Security**  
24 **Insurance Company?**

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1 A. Yes.

2 **Q. Do you understand those two**  
3 **settlement agreements to relate to the**  
4 **references of the prior document?**

5 MS. HARDING: Object on  
6 foundation. Mr. Finke testified  
7 that he prepared these schedules.

8 But to the extent that you  
9 know, go ahead.

10 THE WITNESS: I mean, they  
11 have the same policy numbers --  
12 excuse me. They don't have policy  
13 numbers on Schedule 2, but they  
14 have the same dates in the  
15 agreement.

16 BY MR. BROWN:

17 **Q. It's your understanding it's**  
18 **the same agreement, correct?**

19 MS. HARDING: Object on  
20 foundation.

21 THE WITNESS: Yes.

22 BY MR. BROWN:

23 **Q. Okay. Are you aware of any**  
24 **other agreements between Grace and**

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1 **Unigard, or its successor, Seaton,**  
2 **regarding Unigard policy number 1-0589 or**  
3 **1-2517 relating to asbestos-related**  
4 **coverage other than the two that are**  
5 **listed there?**

6 A. Settlements, did you say?

7 **Q. Yes.**

8 A. No, I am not.

9 **Q. Are you aware of any other**  
10 **agreements between Grace and Unigard, or**  
11 **Seaton, regarding claims handling under**  
12 **any coverage that is alleged to exist**  
13 **under policy number 1-0589 or 1-2517?**

14 A. No, I am not.

15 MR. BROWN: Thank you.

16 MR. SCHIAVONI: Just four or  
17 five things, sir.

18 - - -

19 EXAMINATION

20 - - -

21 BY MR. SCHIAVONI:

22 **Q. Is it fair to say that you**  
23 **have no personal knowledge concerning the**  
24 **circumstances under which Exhibits 6**

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1 **through 9 were prepared?**

2 A. No.

3 MS. HARDING: Is it fair to  
4 say?

5 THE WITNESS: I am sorry.  
6 BY MR. SCHIAVONI:

7 **Q. Let me ask again. That was**  
8 **a mistake right that you just said?**

9 A. Yes, it was.

10 **Q. Is it fair to say that you**  
11 **have no personal knowledge concerning the**  
12 **circumstances under which Exhibits 6**  
13 **through 9 were prepared?**

14 A. I have no personal knowledge  
15 of the circumstances through which  
16 Exhibits 6 through 9 were prepared.

17 **Q. All right. Those are**  
18 **exhibits at this deposition, 6 through 9,**  
19 **right?**

20 A. Yes.

21 **Q. And I am sorry to ask you**  
22 **this, I apologize, but how old were you**  
23 **in 1963?**

24 MR. LEWIS: I object.

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1 That's an impertinent question.

2 THE WITNESS: I was 6 years  
3 old.

4 MR. SCHIAVONI: It  
5 demonstrates how silly your  
6 questions were, sir.

7 BY MR. SCHIAVONI:

8 **Q. How old were you in 1963?**

9 A. I was 6.

10 **Q. Is it fair to say you didn't**  
11 **work at Grace in the '50s and '60s,**  
12 **right?**

13 A. No, I didn't.

14 **Q. And you never worked at the**  
15 **Zonolite Company; is that right?**

16 A. No, I didn't.

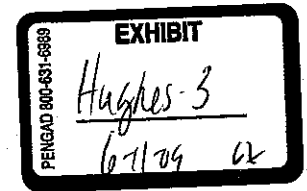
17 **Q. Is it fair to say that you,**  
18 **Mr. Hughes, have no personal knowledge as**  
19 **to whether or not any policies were**  
20 **actually issued to BNSF in the '50s or**  
21 **'60s, do you, because you weren't around**  
22 **then?**

23 A. No, I don't.

24 MR. SCHIAVONI: Thank you,

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
W. R. GRACE & CO., *et al.*<sup>1</sup> ) Case No. 01-01139 (JKF)  
Debtors. ) Jointly Administered  
)  
)  
)  
)



**EXHIBIT 4 TO EXHIBIT BOOK**  
**TRUST DISTRIBUTION PROCEDURES**

EXHIBIT 4

Attached.

<sup>1</sup> The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co. Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., GC Limited Partners I, Inc., (f/k/a Grace Cocoa Limited Partners I, Inc.), GC Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc. GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation, W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kōotenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (F/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

REMAINDER OF EXHIBIT OMITTED  
SEE EXHIBIT 4 TO EXHIBIT BOOK  
(D.I. 20874)

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April 25, 2009

**Subject:** Designation of Witnesses in response to OneBeacon America Insurance Company ("OneBeacon"), Seaton Insurance Company ("Seaton"), Government Employees Insurance Company ("GEICO"), Columbia Insurance Company f/k/a Republic Insurance Company ("Columbia"), Fireman's Fund Insurance Company, Allianz S.p.A., f/k/a Riunione Adriatica di Scurta (collectively, "FFIC"), Travelers Casualty and Surety Company, f/k/a The Aetna Casualty and Surety Company ("Travelers"), Allstate Insurance Company ("Allstate"), CNA, Libby Claimants, and London Market Companies Deposition Notices of W.R. Grace et Co., et al. (*In re W.R. Grace & Co., et al.*, Bankruptcy Case No. 01-01139 (JKF)).

Dear Counsel:

Pursuant to Rule 30 of the Federal Rules of Civil Procedure (F.R.C.P.), made applicable in these proceedings by Rules 7030 and 9014 of the Federal Rules of Bankruptcy Procedure, Debtors W.R. Grace & Co. et al. (hereinafter "Grace") have objected to the notices of deposition served by the above captioned parties seeking Rule 30(b)(6) testimony from Grace. Debtors' Objection to Notices of Deposition of W.R. Grace & Co. et al. Pursuant to Rule 30(b)(6). (Docket No. 21312). Grace has objected to the deposition notices on the grounds that they purport to seek legal conclusions, information prepared in anticipation of litigation, information obtained by or on behalf of counsel for Grace in preparation for trial, information protected by the work product privilege, information protected by the attorney/client privilege, information protected by the common interest privilege, information protected by Federal Rule of Evidence 408, and/or information otherwise beyond the permissible scope of discovery as set forth in the Federal Rules of Civil Procedure, the Federal Rules of Evidence, the Federal Rules of Bankruptcy Procedure or this Court's rules.

Pursuant to Rule 30 of the Federal Rules of Civil Procedure and subject to and without waiving any of its objections and all other claims of privilege, Grace has designated Richard Finke, Jay Hughes, and Hudson La Force to serve as witnesses in response to the above captioned Rule 30(b)(6) notices. *See* Attachment A. With such designations, Grace hereby retracts Mark Shelnitz and Jeff Posner as designated witnesses for these Rule 30(b)(6)

**KIRKLAND & ELLIS LLP**

April 25, 2009  
Page 2

depositions. In accordance with F.R.C.P. 30(d)(1), Grace shall make each witness available for one (1) day of seven (7) hours. The designated witnesses will respond to questions relating to Rule 30(b)(6) subject matters and other factual inquiries relevant to Phase I and II of these proceedings. *See Attachment A.*

Sincerely,

Barbara M. Harding

BHH/kfl

**WR Grace / Confirmation Hearing 30(b)(6) Deposition Notice****Witness Designations**

<b>Dep Notice Filed by</b>	<b>Topic of Deposition</b>	<b>Designated Witness</b>
Anderson Memorial Hospital	The interpretation of the sales information attached to Anderson Memorial Hospital's ZAI Proof of Claim Form, including billing registers, and all information contained therein	Richard Finke
Travelers and Allstate	1. The treatment of the Travelers 1992 Agreement under the Revised Joint Plan	Richard Finke
	2. The treatment of the Travelers 1996 Agreement under the Revised Joint Plan	Richard Finke
	3. The treatment of the Allstate 1994 Agreement under the Revised Joint Plan	Richard Finke
	4. The treatment of the Allstate 1996 Agreement under the Revised Joint Plan	Richard Finke
	5. The provisions of the Revised Joint Plan that relate to Asbestos Insurance Settlement Agreements, including, without limitation, Sections 1.1(14), 1.1(16), 1.1(200), 7.7, 7.13, 7.15, 8.4.1, 9.1 and Exhibit 6 (Asbestos Insurance Transfer Agreement)	Richard Finke
	6. The provisions of the Revised Joint Plan that relate to Asbestos Insurance Reimbursement Agreements, including, without limitation, Sections 1.1(9), 1.1(16), 7.2.2(d)(iv), 7.7, 7.13, 7.15, 9.1 and Exhibit 6 (Asbestos Insurance Transfer Agreement)	Richard Finke
	7. The provision of the Revised Joint Plan that relate to Indirect PI Trust Claims, including, without limitation, Section 1.1(138) and Exhibit 4 (Trust Distribution Procedures)	Richard Finke
<b><u>SUPPLEMENTAL NOTICE</u></b>		
	1. The provisions of the Revised Joint Plan that relate to Asbestos PD Claims and Indirect PD Trust Claims, including, without limitation, Sections 1.1(18), 1.1(137), 3.1.7, Exhibit 3 (Asbestos PD Trust Agreement), and Exhibit 25 (Class 7A CMO) Trust Distribution Procedures	Richard Finke
	2. The classification of Travelers as a Class 7A creditor and solicitation of Class 7A claims	Richard Finke

Dep Notice Filed by	Topic of Deposition	Designated Witness
	3. The treatment and/or payment, pursuant to the Revised Joint Plan, of claims for indemnification arising under the Travelers 1992 Agreement arising from Asbestos PD Claims	Richard Finke
	4. The treatment and/or payment, pursuant to the Revised Joint Plan, of claims for indemnification arising under the Travelers 1996 Agreement arising from Asbestos PD Claims	Richard Finke
OneBeacon, Seaton, GEICO, Columbia	A. Classification and treatment of Indirect PI Trust Claims, including "Indemnified Insurer TDP Claims" and "Insurance-Related TDP Claims" as those terms are used in Sections 5.13 and 5.12 respectively of the Asbestos PI Trust Distribution Procedures	Richard Finke
	B. Bases for the classification of certain contractual indemnity claims held by Settled Asbestos Insurance Companies as Class 6 Asbestos PI Claims	Richard Finke
	C. Bases for the classification and treatment of non-asbestos-related contractual indemnity claims held by Settled Asbestos Insurance Companies as Class 9 General Unsecured Claims	Richard Finke
	D. Scope and operation of the Asbestos PI Channeling Injunction	Richard Finke
	E. Scope and Operation of the Asbestos Insurance Entity Injunction and Successor Claim Injunction	Richard Finke
	F. Scope and operation of Section 7.15 of the Plan entitled, "Insurance Neutrality", and any other purported insurance neutrality provisions in the Plan or Plan Documents	Richard Finke
	G. Operation of the Asbestos PI Trust Agreement and Asbestos PI Trust Distribution Procedures	Jay Hughes
	H. Bases for Settled Asbestos Insurance Company designations appearing in Exhibit 5 to the Exhibit Book	Richard Finke
	I. Scope and bases for releases and exculpation provisions in the Plan	Richard Finke
	J. The scope, operation, and necessity of the findings of fact, conclusions of law, orders, and decrees	Richard Finke

Dep Notice Filed by	Topic of Deposition	Designated Witness
	set forth in Section 7.7 of the Plan	Richard Finke
	K. The impact of the Plan and Plan Documents on the claims asserted, threatened, or that may later be asserted by Scotts, BNSF, the Libby Claimants, and/or Kaneb against the Debtors and/or any Asbestos Insurance Entity	Richard Finke
	L. The criteria used to select the Asbestos PI Trustees and the Asbestos PI TAC	Richard Finke
	M. The business background, experience, and qualifications of the individuals selected to be the Asbestos PI Trustees and the members of the Asbestos PI TAC	Richard Finke
	N. The respective powers and authority conferred upon the Asbestos PI Trustees, Asbestos PI TAC, and the Asbestos PI FCR under the Plan and Plan Documents including, but not limited to, the Asbestos PI Trust Agreement, Asbestos PI Trust Distribution Procedures, and the Asbestos Insurance Transfer Agreement	Richard Finke
	O. The respective roles of the Asbestos PI Trustees, Asbestos PI TAC, and the Asbestos PI FCR in the evaluation, handling, defense and settlement/resolution of Asbestos PI Claims under the Plan and Plan Documents	Richard Finke
	P. the role, if any, of the Asbestos Insurance Entities in the evaluation, handling, defense and settlement/resolution of Asbestos PI Claims under the Plan and Plan Documents	Richard Finke
	Q. The scope of the Asbestos Insurance Rights that are to be transferred or assigned to the Asbestos PI Trust pursuant to the Asbestos Insurance Transfer Agreement, and any other Plan Documents	Richard Finke
	R. The impact of the Plan and Plan Documents on the respective rights and duties of the Debtors and Asbestos Insurance Entities under the Asbestos Insurance Policies	Richard Finke
	S. The impact of the Plan and Plan Documents on subsequent coverage litigation between the Asbestos PI Trust (or the Debtors) and Asbestos Insurance Entities including, but not limited to, Non-	Richard Finke

Dep Notice Filed by	Topic of Deposition	Designated Witness
	Settled Asbestos Insurance Companies	
	T. The nature and value of the Asbestos PI Trust Assets to be used to fund the Asbestos PI Trust	Hudson La Force
	U. The Plan's compliance with Section 524(g) of the Bankruptcy Code, as well as other applicable provisions of the Bankruptcy Code	Richard Finke
Fireman's Fund Insurance Co. (re Surety Bond Issues)	1. The classification and treatment of the Proofs of Claim under the Plan (including, to the extent applicable, the TDPs)	Richard Finke
	2. The classification and treatment of the Supersedeas Bond Claim under the Plan (including, to the extent applicable, the TDPs)	Richard Finke
	3. The extent to which the claims asserted in the Proofs of Claim are "Pre-Petition Liquidated Claims" subject to treatment under § 5.2 of the TDPs	Richard Finke
	4. The extent to which the Supersedeas Bond Claim is "Pre-Petition Liquidated Claim"	Richard Finke
	5. The actual, expected, and/or intended effect of excluding Indirect PI Trust Claims that are Pre-Petition Liquidated Claims from § 5.6 of the TDPs	Richard Finke
	6. The meaning and operation of § 5.2 of the TDPs in respect of Pre-Petition Liquidated Claims	Richard Finke
	7. The meaning of the phrase "provided there is no supersedeas bond associated with such verdict or judgment..." in § 5.2(a)(ii) of the TDPs, as well as how this phrase works in relation to § 5.2(b) of the TDPs	Richard Finke
	8. The extent to which the Supersedeas Bond Claim is an Indirect PI Trust Claim, a Class 6 Claim, or a Class 9 Claim	Richard Finke
	9. Debtors' contentions, if any, regarding whether FFIC may setoff any obligations it may owe to Grace under liability insurance policies issued or allegedly issued by FFIC to W.R. Grace & Co., et	Richard Finke

Dep Notice Filed by	Topic of Deposition	Designated Witness
	<p>al., against Grace's obligations to FFIC under the Special Surety Indemnification Agreement, and the bases for any such contentions</p> <p>10. Debtors' pre-petition payment or funding for the payment of Asbestos Claims, such as judgments, settlements, and litigation costs, from sources other than liability insurance</p> <p>11. The actual, expected, and/or intended impact, if any, of Plan Confirmation on the Special Surety Indemnification Agreement, the Supersedeas Bond, and the Supersedeas Bond Claim, including whether or not Reorganized Debtors will retain the Debtors' obligations under the Special Surety Indemnification Agreement and who, if not Reorganized Debtors, will succeed to or assume such obligations</p> <p>12. The actual, expected, and/or intended impact, if any, of Plan Confirmation on <u>W.R. Grace &amp; Co. v. Aaron Clifton Edwards, et al.</u>, No. 06-00-00112-CV (Tex. App., 6th Appellate Dist.), and the claims asserted in the Proofs of Claim</p>	<p>Jay Hughes</p> <p>Richard Finke</p> <p>Jay Hughes</p>
Fireman's Fund Insurance Co. and Allianz	<p>1. The drafting, negotiation, scope and operation of the Plan, the Asbestos PI Trust Agreement and the Asbestos PI Trust Distribution Procedures, including efforts to (i) involve Asbestos Insurance Entities in the negotiation and/or drafting of the Plan, the Asbestos PI Trust Distribution Procedures, or the Asbestos PI Trust Agreement, or (ii) obtain the consent of the Asbestos Insurance Entities to the Plan, the Asbestos PI Trust Distribution Procedures, and the Asbestos PI Trust Agreement</p> <p>2. The scope and operation of the Asbestos Insurance Entity Injunction and Successor Claims Injunction</p> <p>3. The scope and operation of the Asbestos PI Channeling Injunction, including but not limited to, the effect of the Asbestos PI Channeling Injunction on claims against Settled Asbestos Insurance Companies</p> <p>4. The bases for designating an Asbestos Insurance Entity as a Settled Asbestos Insurance Company</p> <p>5. The selection, qualification, and experience of the proposed Asbestos PI Trustees and the proposed</p>	<p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p>

Dep Notice Filed by	Topic of Deposition	Designated Witness
	<p>Asbestos PI Trust Advisory Committee members</p> <p>6. Compensation or other financial arrangements between or among any of the proposed Asbestos PI Trustees, Asbestos PI Trust Advisory Committee members or members of the Asbestos PI Committee in respect of the negotiation, drafting or contemplated operation of the Asbestos PI Trust</p> <p>7. The value of the Warrants</p> <p>8. The meaning and operation of Section 7.15 of the Plan, including the interaction of Section 7.15 with Sections 8.1.1, 7.13, 7.7(uu), and 7.7(tt) and the Asbestos Insurance Transfer Agreement</p> <p>9. The meaning of the phrase "any defense that the Plan or any of the Plan Documents do not comply with the Bankruptcy Code" in Section 1.1(16) (definition of "Asbestos Insurer Coverage Defenses")</p> <p>10. The impact, if any, of Plan Confirmation on Non-Settled Asbestos Insurance Companies, including:</p> <ul style="list-style-type: none"> <li>a) Whether and to what extent the Reorganized Debtors retain the Debtors' obligations under Asbestos Insurance Policies;</li> <li>b) Whether the Asbestos PI Trust assumes the obligations of the Debtors under the Asbestos Insurance Policies;</li> <li>c) The application of the exculpation provision of Section 11.9 of the Plan;</li> <li>d) Whether the Plan will act as a settlement or judgment that will immediately trigger a payment obligation under the Asbestos Insurance Policies issued by the Non-Settled Asbestos Insurance Companies;</li> <li>e) Whether the Non-Settled Asbestos Insurance Companies' indemnity obligations will be triggered due to the establishment of the Asbestos PI Trust and transfer of assets to the Trust;</li> <li>f) Whether the Non-Settled Asbestos Insurance Companies' indemnity obligations for any Asbestos PI Claim will accrue or be triggered prior to the payment of an Asbestos PI Claim by Asbestos PI Trust;</li> <li>g) Whether and how the Plan and Plan Documents can be used in subsequent Asbestos Insurance Actions or other proceedings by the Asbestos PI Trust or the Debtors against Non-Settled Asbestos</li> </ul>	<p>Richard Finke</p> <p>Hudson La Force</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p>

Dep Notice Filed by	Topic of Deposition	Designated Witness
	<p>Insurance Companies;</p> <p>h) The role, if any, the Non-Settled Asbestos Insurance Companies will have in the evaluation, defense, allowance, or settlement of Asbestos PI Claims channeled to or submitted to the Asbestos PI Trust;</p> <p>i) Whether, and to what extent, the Non-Settled Asbestos Insurance Companies will be responsible for paying all or part of any Asbestos PI Claim resolved by the Asbestos PI Trust pursuant to the Asbestos PI Trust Distribution Procedures or for indemnifying the Asbestos PI Trust for any payment it makes on account of Asbestos PI Claims</p> <p>11. The Debtors' duties and obligations with respect to any Asbestos Insurance Policies upon the transfer of the Asbestos Insurance Rights to the Asbestos PI Trust</p> <p>12. The meaning and scope of the definition of Indirect PI Trust Claims, including whether, and to what extent, claims by Asbestos Insurance Entities for indemnification and/or contribution from Debtors for claims asserted against them, such as, by illustration, the Libby Claimants, or The Scotts Company, LLC, or BNSF Railway Company (or its predecessors)</p> <p>13. The treatment of Indirect PI Trust Claims by the Plan and the Plan Documents</p> <p>14. The basis for classification and treatment of an Asbestos Insurance Entity's Asbestos Claims against the Debtors for indemnification arising from contract or otherwise as Class 6 Asbestos PI Claims</p>	<p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p>
Maryland Casualty Co, Zurich Insurance Co., and Zurich International	<p>1. The scope of protection provided to Settled Asbestos Insurance Companies by the Asbestos PI Channeling Injunction and the scope of Debtors' indemnity obligations under the respective Asbestos Insurance Settlement Agreements</p> <p>2. The viability of the Plan if the Court upholds any objections to the application of the Asbestos PI Channeling Injunction to one or more of the Settled Asbestos Insurance Companies</p> <p>3. The Plan's treatment of any Settled Asbestos Insurance Companies who are found by the Court to have discrete, unsettled coverage under an otherwise settled policy</p>	<p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p>

Dep Notice Filed by	Topic of Deposition	Designated Witness
	<p>4. The intended scope of Debtors' indemnity obligations under the MCC Settlement Agreements</p> <p>5. The Plan Proponents' position that Settled Asbestos Insurance Companies are not creditors</p> <p>6. The impact of the Plan and Plan Documents on the claims asserted, threatened, or that may later be asserted by Scotts, BNSF, and/or the Libby Claimants, against the Debtors and/or any Asbestos Insurance Entity</p> <p>7. The bases for the classification of certain indemnity claims arising from contract or otherwise, against the Debtors held by Settled Asbestos Insurance Companies as Class 6 Asbestos PI Claims</p> <p>8. The classification and treatment under the Plan of Asbestos Insurance Entities' claims against the Debtors for indemnification arising from contract or otherwise which are not Indirect PI Trust Claims</p> <p>9. The scope and operation of the Asbestos PI Channeling Injunction, including but not limited to, the effect of the Asbestos PI Channeling Injunction on claims against Settled Asbestos Insurance Companies</p> <p>10. The Plan's compliance with section 524(g) of the Bankruptcy Code</p> <p>11. The meaning and scope of the indirect PI Trust Claims, including whether, and to what extent, claims by Asbestos Insurance Entities for indemnification and contribution deriving from claims against them, such as those by the Libby Claimants, Scotts, BNSF are Indirect PI Trust Claims</p> <p>12. The treatment of Indirect PI Trust Claims under the Plan, the Asbestos PI Trust Distribution Procedures, and the other Plan Documents, including but not limited to, the treatment of an Asbestos Insurance Entity's claims against the Debtors for indemnification arising from a pre-bankruptcy petition settlement agreement</p> <p>13. The scope of Section 524(g) of the Bankruptcy Code on claims against Settled Asbestos Insurance</p>	<p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p>

Dep Notice Filed by	Topic of Deposition	Designated Witness
	<p>Companies</p> <p>14. The scope and operation of the Asbestos Insurance Entity Injunction and Successor Claims Injunction</p> <p>15. The meaning of the phrase "any defense that the Plan or any of the Plan Documents do not comply with the Bankruptcy Code" in Section 1.1(16)(definition of "Asbestos Insurer Coverage Defenses")</p> <p>16. The meaning and operation of the insurer neutrality provision of Section 7.15 of the Plan, including the interaction of Section 7.15 of the Plan with Sections 8.1.1, 7.13, 7.7(uu), and 7.7(tt) of the Plan and the Asbestos Insurance Transfer Agreement</p> <p>17. The Plan's treatment of <u>Asbestos Insurance Reimbursement Agreements</u></p>	<p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p>
Libby Claimants	<p><u>Plan</u></p> <p>1. Development of Plan among plan proponents, including negotiations, other discussions between or within the plan proponents, and preparation of documents, including drafts.</p> <p>2. Funding of the Asbestos PI Trust, including value at time of negotiation of assets to be used to fund the Asbestos PI Trust.</p> <p>3. Current value of assets to be used to fund the Asbestos PI Trust.</p> <p>4. Projected value at scheduled Confirmation Hearing of assets to be used to fund the Asbestos PI Trust.</p> <p><u>Asbestos PI Trust</u></p> <p>1. Development of the TDP, including negotiations, other discussions between or within the plan proponents, and preparation of documents, including drafts.</p>	<p>Richard Finke</p> <p>Hudson La Force</p> <p>Hudson La Force</p> <p>Hudson La Force</p> <p>Jay Hughes</p>

Dep Notice Filed by	Topic of Deposition	Designated Witness
	<p>2. TDP's in other cases used as models, points of reference or in any other way utilized in the development of the TDP ("Other TDPs").</p> <p>3. Liquidation of claims under Other TDPs.</p> <p>4. Process by which the Asbestos PI Trust will liquidate claims.</p> <p>5. Disease categories under the TDP.</p> <p>6. The "Severe Pleural" disease category under the TDP.</p> <p>7. Provisions of the TDP concerning "Extraordinary Claims."</p> <p><u>Injunctions</u></p> <p>1. The Asbestos PI Channeling Injunction.</p> <p>2. Development of Asbestos PI channeling Injunction among plan proponents, including negotiations, other discussions between or within the plan proponents, and preparation of documents, including drafts.</p> <p>3. Injunctions in other cases similar to the Asbestos PI Channeling Injunction used as models, points of reference or in any other way utilized in the development of the Asbestos PI Channeling Injunction ("Other Channeling Injunctions").</p> <p>4. Litigation concerning scope of Other Channeling Injunctions.</p> <p>5. Scope and operation of the Asbestos PI Channeling Injunction, including the effect, if any, on actions by Libby Claimants against parties other than the Debtors, including but not limited to BNSF, the State of Montana and Maryland Casualty Company, for their own allegedly tortious conduct ("Libby Claimants' Independent Actions").</p> <p>6. Necessity of, or benefit to plan proponents or Asbestos PI Trust from, the Asbestos PI Channeling</p>	<p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p>

Dep Notice Filed by	Topic of Deposition	Designated Witness
	<p>Injunction (including consideration supplied to any of the plan proponents by those protected by the Asbestos PI Channeling Injunction).</p> <p>7. The Asbestos Insurance Entity Injunction.</p> <p>8. Development of Asbestos Insurance Entity Injunction among plan proponents, including negotiations, other discussions between or within the plan proponents, and preparation of documents, including drafts.</p> <p>9. Injunctions in other cases similar to the Asbestos Insurance Entity Injunction used as models, points of reference or in any other way utilized in the development of the Asbestos Insurance Entity Injunction ("Other Insurance Entity Injunctions").</p> <p>10. Litigation concerning scope of Other Insurance Entity Injunctions.</p> <p>11. Scope and operation of the Asbestos Insurance Entity Injunction, including the effect, if any, on Libby Claimants' Independent Actions.</p> <p>12. Necessity of, or benefit to plan proponents or Asbestos PI Trust from, the Asbestos Insurance Entity Injunction (including consideration supplied to any of the plan proponents by those protected by the Asbestos Insurance Entity Injunction).</p> <p>13. The Successor Claims Injunction.</p> <p>14. Development of Successor Claims Injunction among plan proponents, including negotiations, other discussions between or within the plan proponents, and preparation of documents, including drafts.</p> <p>15. Injunctions in other cases similar to the Successor Claims Injunction used as models, points of reference or in any other way utilized in the development of the Successor Claim Injunction ("Other Successor Claims Injunctions").</p>	<p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p>

Dep Notice Filed by	Topic of Deposition	Designated Witness
	<p>16. Litigation concerning scope of Other Successor Claims Injunctions.</p> <p>17. Scope and operation of the Successor Claims Injunction, including the effect, if any, on Libby Claimants' Independent Actions.</p> <p>18. Necessity of, or benefit to plan proponents or Asbestos PI Trust from, the Successor Claims Injunction (including consideration supplied to any of the plan proponents by those protected by the Successor Claims Injunction).</p> <p>19. Release and exculpation provisions of the Plan (the "Releases and Exculpations").</p> <p>20. Development of The Releases and Exculpations among plan proponents, including negotiations, other discussions between or within the plan proponents, and preparation of documents, including drafts.</p> <p>21. Injunctions in other cases similar to the Releases and Exculpations used as models, points of reference or in any other way utilized in the development of the Releases and Exculpations ("Other Releases and Exculpations").</p> <p>22. Litigation concerning scope of Other Releases and Exculpations.</p> <p>23. Scope and operation of the Releases and Exculpations, including the effect, if any, on Libby Claimants' Independent Actions.</p> <p>24. Necessity of, or benefit to plan proponents or Asbestos PI Trust from, the Releases and Exculpations (including consideration supplied to any of the plan proponents by those protected by the Releases and Exculpations).</p> <p>25. The plan's compliance with Section 524(g) of the Bankruptcy Code.</p> <p><u>Liquidation Analysis</u></p>	<p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p>

Dep Notice Filed by	Topic of Deposition	Designated Witness
	<p>1. Liquidation analysis contained in Exhibit Book as Exhibit 8 (the "Liquidation Analysis")</p> <p>2. Development of Liquidation Analysis among plan proponents, including negotiations, other discussions between or within the plan proponents, and preparation of documents.</p> <p>3. Projections, assumptions, calculations and sources of information utilized in preparing Liquidation Analysis.</p> <p>4. Any changes in, or changes in the validity of, any such projections, assumptions, calculations and sources of information, through the present date.</p> <p><u>Claims History</u></p> <p>1. Grace claims history concerning Asbestos PI Claims.</p> <p>2. Grace's settlement practices and verdict history for Asbestos PI Claims.</p> <p>3. Grace's settlement practices and verdict history for punitive damage claims.</p> <p>4. Grace's settlement practices and verdict history for wrongful death claims.</p> <p>5. Grace's settlement practices and verdict history for claims resulting from exposure to Grace's asbestos in Lincoln County, Montana.</p> <p>6. Grace's settlement practices and verdict history for claims resulting from exposure outside of Lincoln County, Montana, to Grace's asbestos originating in Lincoln County, Montana.</p> <p><u>Rights of BNSF</u></p> <p>1. Claims of Burlington Northern Santa Fe Railroad and affiliates ("BNSF") against the Debtors.</p> <p>2. Proofs of claim filed by BNSF.</p>	<p>Hudson La Force</p> <p>Hudson La Force</p> <p>Hudson La Force</p> <p>Hudson La Force</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p>

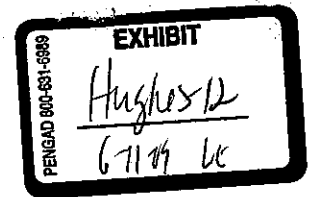
Dep. Notice Filed by	Topic of Deposition	Designated Witness
	<p>3. Any rights of indemnification by BNSF against the Debtors, and any agreements pertaining thereto.</p> <p>4. Any rights of contribution by BNSF against the Debtors.</p> <p>5. Any insurance covering BNSF for Libby Claimants' Independent Actions against BNSF.</p> <p><u>Rights of the State of Montana</u></p> <p>1. Claims of the State of Montana against the Debtors.</p> <p>2. Proofs of claim filed by the State of Montana.</p> <p>3. Any rights of indemnification by the State of Montana against the Debtors, and any agreements pertaining thereto.</p> <p>4. Any rights of contribution by the State of Montana against the Debtors.</p> <p>5. Any insurance covering the State of Montana for Libby Claimants' Independent Actions against the State of Montana.</p> <p><u>Rights of Maryland Casualty Company</u></p> <p>1. Claims of the Maryland Casualty Company, including affiliates ("MCC") against the Debtors.</p> <p>2. Proofs of claim filed by MCC.</p> <p>3. Any rights of indemnification by MCC against the Debtors, and any agreements pertaining thereto.</p> <p>4. Any rights of contribution by MCC against the Debtors.</p> <p>5. Any insurance covering MCC for Libby Claimants' Independent Actions against MCC.</p>	<p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p>

Dep Notice Filed by	Topic of Deposition	Designated Witness
	<p><u>Insurance</u></p> <ol style="list-style-type: none"> <li>1. Grace's insurance policies (whether owned by Grace or purchased for another entity), coverage issues and settlements with insurers.</li> <li>2. Grace's insurance coverage for products/completed operations, including terms thereof, aggregate caps, and defenses to and limitations on such coverage.</li> <li>3. Projected value of the Asbestos Insurance Rights constituting products/completed operations coverage.</li> <li>4. Projected aggregate liquidated amount of the Asbestos PI Claims (including future claims) covered by products/completed operations insurance.</li> <li>5. Grace's insurance coverage for premises/non-completed operations, including terms thereof, aggregate caps, and defenses to and limitations on such coverage.</li> <li>6. Projected value of the Asbestos Insurance Rights constituting premises/non-completed operations coverage.</li> <li>7. Projected aggregate liquidated amount of the Asbestos PI Claims (including future claims) covered by premises/non-completed operations insurance.</li> <li>8. Settlements with Grace insurers.</li> <li>9. Bases for designation under the Plan of certain Asbestos Insurance Entities as Settled Asbestos Insurance Companies.</li> </ol>	<p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Jay Hughes</p> <p>Richard Finke</p>
CNA	<ol style="list-style-type: none"> <li>1. The meaning and operation of the insurer neutrality provision of Section 7.15 of the Plan, including the interaction of Section 7.15 of the Plan with Sections 8.1.1, 7.13, 7.7(uu), and 7.7(tt) of the Plan and the Asbestos Insurance Transfer Agreement.</li> <li>2. The treatment of Indirect PI Trust Claims under the Plan, the Asbestos PI Trust Distribution Procedures, and the other Plan Documents, including but not limited to, the treatment of an Asbestos</li> </ol>	<p>Richard Finke</p> <p>Richard Finke</p>

Dep Notice Filed by	Topic of Deposition	Designated Witness
	<p>Insurance Entity's claims against the Debtors for indemnification arising from a pre-bankruptcy petition settlement agreement.</p> <p>3. The meaning and scope of Indirect PI Trust Claims, including whether, and to what extent, claims by Asbestos Insurance Entities for indemnification and contribution deriving from claims against them, such as those by the Libby Claimants, Scotts, and BNSF, are Indirect PI Trust Claims.</p> <p>4. The basis for classification and treatment of an Asbestos Insurance Entity's Asbestos Claims against the Debtors for indemnification arising from contract or otherwise as Class 6 Asbestos PI Claims.</p> <p>5. The classification and treatment under the Plan of Asbestos Insurance Entities' claims against the Debtors for indemnification arising from contract or otherwise which are not Indirect PI Trust Claims.</p> <p>6. The scope and operation of the Asbestos PI Channeling Injunction, including but not limited to, the effect of the Asbestos PI Channeling Injunction on claims against Settled Asbestos Insurance Companies.</p> <p>7. The scope and operation of the Asbestos Insurance Entity Injunction and Successor Claims Injunction.</p> <p>8. The meaning of the phrase "any defense that the Plan or any of the Plan Documents do not comply with the Bankruptcy Code" in Section 1.1(16) (definition of "Asbestos Insurer Coverage Defenses")</p> <p>9. The drafting, negotiation, scope and operation of the Asbestos PI Trust Agreement and the Asbestos PI Trust Distribution Procedures, including efforts to obtain the consent of the Asbestos Insurance Entities to the Plan, the Asbestos PI Trust Distribution Procedures, and the Asbestos PI Trust Agreement, or to involve them in drafting the Asbestos PI Trust Agreement.</p> <p>10. The selection, qualification, and experience of the Asbestos PI Trustees and Asbestos PI Trust Advisory Committee members.</p>	<p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p>

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	<p>11. Any compensation or other financial arrangements between each Asbestos PI Trustee and any Asbestos PI Trust Advisory Committee member or member of the Asbestos Claimants Committee on the one hand, and the Asbestos PI Trust.</p> <p>12. The bases for designating an Asbestos Insurance Entity as a Settled Asbestos Insurance Company.</p> <p>13. The Plan's treatment of Asbestos Insurance Reimbursement Agreements.</p> <p>14. The valuation of the Warrants, including, but not limited to, the use of any valuation model or similar valuation tool.</p> <p>15. The impact, if any, of Plan Confirmation on Non-Settled Asbestos Insurance Companies, including:</p> <ul style="list-style-type: none"> <li>a. Whether and to what extent the Reorganized Debtors retain the Debtors' obligations under Asbestos Insurance Policies;</li> <li>b. Whether the Asbestos PI Trust assumes the obligations of the Debtors under the Asbestos Insurance Policies;</li> <li>c. The application of the exculpation provision of Section 11.9 of the Plan;</li> <li>d. Whether the Plan will act as a settlement or judgment that will immediately trigger a payment obligation under the Asbestos Insurance Policies issued by the Non-Settled Asbestos Insurance Companies;</li> <li>e. Whether the Non-Settled Asbestos Insurance Companies' indemnity obligations will be triggered due to the establishment of the Asbestos PI Trust and transfer of assets to the Trust;</li> <li>f. Whether the Non-Settled Asbestos Insurance Companies' indemnity obligations for any Asbestos PI Claim will accrue or be triggered prior to the payment of an Asbestos PI Claim by Asbestos PI Trust;</li> <li>g. Whether and how the Plan and Plan Documents can be used in subsequent Asbestos Insurance Actions or other proceedings by the Asbestos PI Trust or the Debtors against Non-Settled Asbestos Insurance Companies;</li> <li>h. The role, if any, the Non-Settled Asbestos Insurance Companies will have in the evaluation, defense, allowance, or settlement of Asbestos PI Claims channeled to or submitted to the Asbestos PI</li> </ul>	<p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Hudson La Force</p> <p>Richard Finke</p>

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	<p>Trust;</p> <p>i. Whether, and to what extent, the Non-Settled Asbestos Insurance Companies will be responsible for paying all or part of any Asbestos PI Claim resolved by the Asbestos PI Trust pursuant to the Asbestos PI Trust Distribution Procedures or for indemnifying the Asbestos PI Trust for any payment it makes on account of Asbestos PI Claims.</p> <p>16. The Debtors' duties and obligations with respect to any Asbestos Insurance Policies upon the transfer of the Asbestos Insurance Rights to the Asbestos PI Trust.</p> <p>17. The treatment of workers compensation obligations as unimpaired, general unsecured claims that are to be liquidated and paid in full.</p>	<p>Richard Finke</p> <p>Richard Finke</p>
London Market Companies	<p>1. The treatment of the London Market Companies 1995 Agreement under the Revised Joint Plan.</p> <p>2. The treatment of the London Market Companies 1996 Agreement under the Revised Joint Plan.</p> <p>3. The provisions of the Revised Joint Plan that relate to Asbestos Insurance Reimbursement Agreements, including, without limitation, Sections 1.1(9), 1.1(16), 7.2.2(d)(iv), 7.7, 7.13, 7.15, 9.1 and Exhibit 6 (Asbestos Insurance Transfer Agreement).</p> <p>4. The provisions of the Revised Joint Plan that relate to Indirect PI Trust Claims, including, without limitation, Sections 1.1(138) and Exhibit 4 (Trust Distribution Procedures).</p>	<p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p> <p>Richard Finke</p>



IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: ) Chapter 11  
)  
W. R. GRACE & CO., *et al.*<sup>1</sup> ) Case No. 01-01139 (JKF)  
) Jointly Administered  
Debtors. )  
)  
)  
)  
)

**EXHIBIT 6 TO EXHIBIT BOOK**  
**ASBESTOS INSURANCE TRANSFER AGREEMENT**

**EXHIBIT 6**

Attached.

<sup>1</sup> The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co. Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., GC Limited Partners I, Inc., (f/k/a Grace Cocoa Limited Partners I, Inc.), GC Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc. GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation., W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (F/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.

REMAINDER OF EXHIBIT OMITTED  
SEE EXHIBIT 6 TO EXHIBIT BOOK  
(D.I. 20874)

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

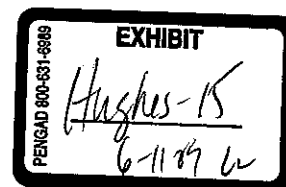
In re:	)	Chapter 11
	)	
W. R. GRACE & CO., <i>et al.</i> <sup>1</sup>	)	Case No. 01-01139 (JKF)
	)	Jointly Administered
Debtors.	)	
	)	
	)	
	)	

EXHIBIT 5 TO EXHIBIT BOOK  
SCHEDULE OF SETTLED ASBESTOS INSURERS  
ENTITLED TO 524 (g) PROTECTION

EXHIBIT 5

Attached.

<sup>1</sup> The Debtors consist of the following 62 entities: W. R. Grace & Co. (f/k/a Grace Specialty Chemicals, Inc.), W. R. Grace & Co. Conn., A-1 Bit & Tool Co., Inc., Alewife Boston Ltd., Alewife Land Corporation, Amicon, Inc., CB Biomedical, Inc. (f/k/a Circe Biomedical, Inc.), CCHP, Inc., Coalgrace, Inc., Coalgrace II, Inc., Creative Food 'N Fun Company, Darex Puerto Rico, Inc., Del Taco Restaurants, Inc., Dewey and Almy, LLC (f/k/a Dewey and Almy Company), Ecarg, Inc., Five Alewife Boston Ltd., GC Limited Partners I, Inc., (f/k/a Grace Cocoa Limited Partners I, Inc.), GC Management, Inc. (f/k/a Grace Cocoa Management, Inc.), GEC Management Corporation, GN Holdings, Inc. GPC Thomasville Corp., Gloucester New Communities Company, Inc., Grace A-B Inc., Grace A-B II Inc., Grace Chemical Company of Cuba, Grace Culinary Systems, Inc., Grace Drilling Company, Grace Energy Corporation, Grace Environmental, Inc., Grace Europe, Inc., Grace H-G Inc., Grace H-G II Inc., Grace Hotel Services Corporation, Grace International Holdings, Inc. (f/k/a Dearborn International Holdings, Inc.), Grace Offshore Company, Grace PAR Corporation, Grace Petroleum Libya Incorporated, Grace Tarpon Investors, Inc., Grace Ventures Corp., Grace Washington, Inc., W. R. Grace Capital Corporation., W. R. Grace Land Corporation, Gracoal, Inc., Gracoal II, Inc., Guanica-Caribe Land Development Corporation, Hanover Square Corporation, Homco International, Inc., Kootenai Development Company, L B Realty, Inc., Litigation Management, Inc. (f/k/a GHSC Holding, Inc., Grace JVH, Inc., Asbestos Management, Inc.), Monolith Enterprises, Incorporated, Monroe Street, Inc., MRA Holdings Corp. (f/k/a Nestor-BNA Holdings Corporation), MRA Intermedco, Inc. (f/k/a Nestor-BNA, Inc.), MRA Staffing Systems, Inc. (f/k/a British Nursing Association, Inc.), Remedium Group, Inc. (f/k/a Environmental Liability Management, Inc., E&C Liquidating Corp., Emerson & Cuming, Inc.), Southern Oil, Resin & Fiberglass, Inc., Water Street Corporation, Axial Basin Ranch Company, CC Partners (f/k/a Cross Country Staffing), Hayden-Gulch West Coal Company, H-G Coal Company.



REMAINDER OF EXHIBIT OMITTED  
SEE EXHIBIT 5 TO EXHIBIT BOOK  
(D.I. 20874)